BANGALORE DEVELOPMENT AUTHORITY

T. Chowdaiah Road, Kumara Park West, Bangalore – 560 020

Construction of Commercial Complex In Hmt Layout, Nagasandra Village, Bengaluru North Taluk, Bengaluru through Private Participation under Concession Model (PPP) On Design, Build, Finance, Operate, Lease and Transfer (the "DBOLT") basis

Request for Proposal

BANGALORE DEVELOPMENT AUTHORITY

T. Chowdaiah Road, Kumara Park West, Bangalore – 560 020

May 2025

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DISCLAIMER

The information contained in this Request for Proposal ("RFP") document or subsequently provided to Applicant(s), whether verbally or in documentary form by or on behalf of the **Bangalore Development Authority (BDA),** or any of their employees or advisors, is provided to Applicant(s) on the terms and conditions set out in this RFP document and any other terms and conditions subject to which such information is provided.

This RFP document is not an agreement and is not an offer or invitation to any other party. The purpose of this RFP document is to provide interested parties with information to assist the formulation of their Application for Proposal ("AFP"). The RFP document does not purport to contain all the information each Applicant may require. This RFP document may not be appropriate for all persons, and it is not possible for the **Bangalore Development Authority (BDA),** Representatives, their employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP document. Certain Applicants may have a better knowledge of the proposed Project than others. Each Applicant should conduct its own investigations and analysis, and should check the accuracy, reliability and completeness of the information in this RFP document, and obtain independent advice from appropriate sources. The **Bangalore Development Authority (BDA),** Representatives, their employees and advisors make no representation or warranty and shall incur no liability under any law, statute, rule or regulation as to the accuracy, reliability or completeness of the RFP document.

BDA may in their absolute discretion, but without being under any obligation to do so, update, amend or supplement the information in this RFP document.

BANGALORE DEVELOPMENT AUTHORITY

T. Chowdaiah Road, Kumara Park West, Bangalore – 560 020

No. BDA / EE /Market Div / TEN / 474 / 2025–26

Office of the Executive Engineer
Markets Division
Bangalore Development Authority
Bangalore – 560 102.
Date: 02.05.2025

NOTICE INVITING TENDER

(Revision of Event Dates)

(Through GOK e – Procurement Platform http:// kppp.karnataka.gov.in)

The Executive Engineer, Markets Division, Bangalore Development Authority (BDA), Bengaluru, on behalf of the Commissioner, Bangalore Development Authority, has invited tenders vide No. BDA / EE / ID4 / TEN / 474 / 2024–25, Date: 23.10.2024, from eligible Bidder/ Consortium, for the work of "Construction of Commercial Complex at CA No. 7 in HMT Employees Housing Building Co-Operative Society Ltd BDA Approved Layout, Nagasandra Village SY NO. 54, 57, 59 AND 60, Bangalore North Taluk" on a Concession Model through private participation (PPP) on Design, Build, Finance, Operate, Lease and Transfer (the "DBOLT") basis". In continuation of the Notice Inviting Tender dated: 23.10.2024, The Revision of Event Dates are notified herein below:

1. **Other details can be seen in the tender documents.**

Sl No	Name of Work	EMD Rs. In lakhs	Time for Completion
1	"Construction of Commercial Complex at CA No. 7 in HMT Employees Housing Building Co-Operative Society Ltd BDA Approved Layout, Nagasandra Village SY NO. 54, 57, 59 AND 60, Bangalore North Taluk" on a Concession Model through private participation (PPP) on Design, Build, Finance, Operate, Lease and Transfer (the "DBOLT") basis	30.00	24 Months

2. **Clarification of Tender Documents:**

   A prospective tenderer requiring any clarification of the tender documents or additional information may contact Executive Engineer, Markets Division, BDA (Mob:8861083656) indicated in the invitation to tender. Or through email: id4eebda@gmail.com upto date and time notified below.

   The Tenderer or his Authorized Representative is invited to attend a **Pre Bid Tender Meeting**, which will take place at the Office of the **Engineer Member, Bangalore Development Authority**, T. Chowdaiah Road, Kumara Park West, Bangalore – 560 020 on the date and time notified below.

3. **Calendar of Events**

a)	Availability of Tender Document	5th May 2025 onwards
b)	Last date for receiving queries	9th May 2025 upto 16.00 hrs
c)	Pre-Bid Meeting	12th May 2025 at 16.00 hrs
d)	Response to Queries	14th May 2025
e)	Bid Due Date	19th May 2025upto 16.00 hrs
f)	Technical Bid Opening	20th May 2025 at 16.00 hrs
g)	Financial Bid Opening	Will be Intimated to the Eligible Bidders

Any changes in calendar of events will not be published in newspapers and will be notified in E-procurement only.

4. Any Conditional Tender will be rejected.
5. Tenderer shall upload scanned copies of certificates pertaining to their eligibility criteria, essential conditional criteria, financial criteria documents etc. No physical documents shall be considered. All the participants shall produce all the original documents for verification after the opening of Technical Bid.
6. The BDA reserves the right to reject any or all of the Tenders without thereby incurring any Liability or Obligation to inform the Tenderers / Bidders of the Reasons for such action.
7. Interested Tenderer may obtain further information at Employer's address indicated in the invitation of tender during office hours.

Executive Engineer
Markets Division,
Bangalore Development Authority
Bangalore

1. Introduction

1.1 Background

1.1.1 The Bangalore Development Authority (BDA) (the “Authority”) came into existence in 1976 as a successor to the erstwhile City Improvement Trust Board. It was established by way of a separate act in the state legislature vide the BDA Act 1976, and it came into effect on 6th January 1976. Development of Bengaluru in a planned manner, creating quality infrastructure, provision of sites and services and catering to the housing needs of the under privileged are the focus areas of the BDA. Its Vision is “To transform Bengaluru to an ideal global destination with high quality infrastructure, better quality of life by ensuring sustainable and planned development based on effective monitoring, regulation, through participatory and innovative approach”.

1.1.2 HMT Layout, Nagasandra, Jalahalli Planning Zone, is an important residential hub in Bangalore. The Bangalore Development Authority (BDA) is the owner of the Site measuring about 14186.25 Square Meters situated in Sy. Nos. 54, 57, 59 and 60 in HMT Layout, Nagasandra, within Jalahalli Planning Zone, Bengaluru (hereinafter collectively referred to as “Project Site”). With an objective to provide better facilities to the community and for better commercial utilization of the Project Site, the Authority has decided to undertake “Construction of Commercial Complex at CA No. 7 in HMT Employees Housing Building Co-Operative Society Ltd BDA Approved Layout, Nagasandra Village SY NO. 54, 57, 59 AND 60, Bangalore North Taluk” on a Concession Model through private participation (PPP) on Design, Build, Finance, Operate, Lease and Transfer (the "DBOLT") basis (the “Project Facility or Commercial Facility”), and has decided to carry out the bidding process for selection of the Bidder to whom the Project may be awarded. BDA vide tender notice No. BDA/EE/Markets Dvn/TEN/474/2024–25 dated 23.10.2024 had invited proposals for the project.

1.1.3 The Project is to be developed under a Design, Build, Finance, Operate, Lease and Transfer (the "DBOLT") i.e. under a Concession Model for a Concession period of 30 years and is further extendable by mutual agreement for 30 (Thirty) years as prescribed in the Concession Agreement. The Selected Bidder, who is either company incorporated under Companies Act, 1956/2013 or its substitute thereof or undertakes to incorporate as such prior to execution of the Concession Agreement (the "Concessionaire") shall be responsible to design, engineer, finance, procure, develop, construct, maintain, manage and transfer the commercial complex as per standards set out in the Concession Agreement. The Concessionaire is allowed to use the Commercial Facility and permitted to exercise and/ or enjoy the rights, powers, benefits, privileges, authorisations and entitlements as set forth in the Concession Agreement including the right to collect, retain and appropriate all tariffs, Parking Fees, rentals, other fees and charges for the facilities and services provided, and to hand back the Commercial Facilities on the Expiry Date or the Termination Date as the case may be ("the Concession"), under and in accordance with the provisions of a long term Concession Agreement (the "Concession Agreement") to be entered into between the Concessionaire and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant thereto.

1.1.4 The design, construction, furnishing, marketing and implementation period allowed for the Commercial facility will be 36 (thirty six) months from Commencement Date.

1.1.5 The Concession Agreement sets forth the detailed terms and conditions for grant of the concession to the Concessionaire, including the scope of the Concessionaire's services and obligations (the "Concession").

1.1.6 The Concessionaire shall be permitted to commercially exploit the Commercial Facility and services and adapt the same to suit the changing market trends or business needs/ expectancies from time to time so long as such exploitation is not opposed or detrimental to the public good and is also in conformity with applicable laws, for commercial use by the Concessionaire/Lessee including offices, call centres, BPO's / KPO's, hotels, rooms, restaurants, food courts, alcoholic liquor, and pub/bars, entertainment complexes (multiplex, cinema hall, auditorium, healthcare

institutions (hospitals, research institutions, health tourism, and other health facilities) museum, games complex with video games, bowling alley, snooker/ billiards etc.), shopping mall, amusement park, convention centres, commercial parks, SEZ, Social Club, office space, business centres, educational institutions, coaching centers, hospitality sector, residential sector, service apartments, hostel rooms and such other activities including the above mentioned that are legally permissible etc.

1.1.7 Bids are invited for the Project on the basis of the highest annual concession fee (the "Annual Concession Fee") offered by a Bidder for undertaking the Project. The concession period is pre-determined, as indicated in the Concession Agreement. The Bidder, who offers Highest Concession Payment to BDA for entire concession term payable in equated annual instalments, shall be selected, subject to the fulfilment of other conditions in this RFP. The concession Fee quoted by the selected bidder shall be increased at the rate of 5% every 5 years. The annual concession payment shall be made by selected bidder effective from the Commercial Operations Date of the Commercial Facility. Subsequent Concession payments, till the end of the Concession Period, shall be made on annual basis. The last concession payment for a commercial facility shall be paid on the last quarter before the expiry of the Concession Period.

1.1.8 In this RFP, the term “Highest Bidder” shall mean the Bidder who is offering the highest Annual Concession Fee.

1.1.9 Generally, the Selected Bidder shall be the Highest Bidder. The remaining Bidders shall be kept in reserve and may be invited to match the Bid submitted by the highest Bidder in case such highest Bidder withdraws or is not selected for any reason. In the event that none of the other Bidders match the Bid of Highest Bidder, the Authority may, in its discretion, invite fresh Bids from all remaining Bidders or annul the Bidding Process, as the case may be.

1.1.10 The Selected Bidder shall also pay to the BDA (Authority) annual lease rent (the “Annual Lease Rent”) of Rs.100 (Rupees Hundred) per annum plus applicable taxes in lieu of land awarded on Concession to the Concessionaire. The first Lease Rental payment shall be paid with the execution of the Lease Deed in accordance with the Draft Concession Agreement. The above mentioned Annual Lease Rent shall be for the first year of lease/concession. Thereafter the Annual Lease Rental

shall be escalated at the rate of 5% (five percent) every five years throughout the lease period/concession period. The Selected Bidder shall make payment of Annual Lease Rent in accordance with the Draft Concession Agreement. The Selected Bidder shall be permitted to mortgage the lease hold rights of the undivided interest in the land and building.

1.1.11 The Concessionaire will be entitled to levy and charge an appropriate user fees from users of the Commercial facility, as prescribed in the Concession Agreement.

1.1.12 Terms used in this RFP document which have not been defined herein, shall have the meaning ascribed thereto in the draft Concession Agreement.

1.1.13 The Authority shall receive Bids pursuant to this RFP in accordance with the terms set forth in this RFP and other documents to be provided by the Authority pursuant to this RFP as modified, altered, amended and clarified from time to time by the Authority, (collectively the “Bidding Documents”) and all Bids shall be prepared and submitted in accordance with such terms on or before the date specified in relevant Clause for submission of Bids.

1.1.14 Other details of the process to be followed under this bidding process and the terms thereof are spelt out in this RFP.

2. Bidding Process

B. General

2.1. The Authority has adopted a single stage two cover online tendering process (referred to as the "Bidding Process") in accordance with the Karnataka Transparency in Public Procurement Act, 1999, for selection of the Bidder for award of the Project. Eligibility and qualification of the Bidder will be first examined based on the details submitted under first cover (Technical Bid) with respect to eligibility criteria, qualification criteria and concept proposal prescribed in this RFP. (The “Bidder”, which expression shall, unless repugnant to the

context, include the members of the Consortium). The Financial Bid under the second cover shall be opened of only those Bidders whose Technical Bids are responsive to eligibility and qualification requirements as per this RFP.

2.1.1. Bidders would be required to furnish the information in two separate covers. The first cover would have the Technical Bid with respect to eligibility criteria, qualification criteria and concept proposal comprising of documentary proof for Qualification requirements (experience, financial capability and technical capability) prescribed in this RFP. During the evaluation of first cover, the experience, financial capability and the concept proposal demonstrating the technical capabilities shall be considered based on the merits and similar experience of the bidder and bidders shall have to obtain minimum marks in the concept proposal submitted in the first cover in the form of drawings and elevations etc. to qualify in the technical bid, as per this RFP. Second cover shall be opened of bidders whose technical bids submitted in the First cover are declared as successful.

2.1.2. BDA wishes to receive Proposals from interested parties for the Project in order to identify the Successful Bidder.

2.1.3. The Proposals would be evaluated on the basis of the evaluation criteria set out in this RFP document ("Criteria for Qualification" and "Criteria for Evaluation") in order to identify the Successful Bidder for the Project ("Successful Bidder"). The Successful Bidder would then have to enter into a Concession Agreement with BDA, and perform its obligations as stipulated therein, in respect of the Project. The draft Concession Agreement forms part of this RFP document. BDA will also execute a lease deed containing similar terms enumerated in the Concession Agreement with the successful bidder for the period of the Concession.

2.1.4. The Project would be awarded to the Successful Bidder after evaluating the Proposals on the basis of the bidding criteria specified in the RFP document for the Project. Further details of the process to be followed at the Proposal Stage would be spelt out in the RFP document.

The complete Bidding Documents including the draft Concession Agreement for the Project is enclosed for the Bidders. Subject to the provisions of Clause 2, the aforesaid documents and any addenda issued subsequent to this RFP document will be deemed to form part of the Bidding Documents.

2.2. Scope of Proposal

2.2.1. Scope of work will broadly include designing, engineering, financing, construction, and maintenance of the Commercial Facility, engineer, refurbish, modify, alter or procure, marketing, sourcing the sub-Lessees/Retailers, and Sub-leasing the retail outlets, office units and other facilities within the Commercial Facility, and the operation and maintenance thereof of commercial complex and more particularly as set forth in the Concession Agreement.

C. Instructions to the Bidders

2.3. Eligible Bidders

2.3.1. The Bidders eligible for participating in the bidding process shall be any one of the following two categories:

Category 1: A single Business Entity defined as a company incorporated under the Companies Act, 1956 and if it is a foreign company under an equivalent law abroad OR a proprietorship/ partnership firm/ individual. Where the Bidder is a single entity, it shall be required to form an appropriate Special Purpose Vehicle, incorporated under the Indian Companies Act 2013 (the "SPV"), to execute the Concession Agreement and implement the Project.

Category 2: In case the Bidder, which is a Business Entity (hereinafter called as "Lead Member") intends to associate with others it could associate with another

individual or Business Entity (hereinafter called as “Associate member”) and with whom a valid Joint Bidding Agreement shall be made formalizing such an arrangement in the prescribed format. This joint entity shall hereinafter be referred as "Consortium."

2.3.2. Proposals submitted by a Consortium should comply with the following additional requirements:

1. The number of members in a Consortium would be limited to Three (3) members;
2. The members of a Consortium shall form an appropriate SPV to execute the Project, if awarded to the Consortium;
3. Members of the Consortium shall nominate one member as the lead member (the “Lead Member”), who shall have an equity share holding of at least 26% (twenty six per cent) of the paid up and subscribed equity of the SPV. The nomination(s) shall be supported by a Power of Attorney, as per the format prescribed, signed by all the other members of the Consortium;
4. The Proposal should contain the information required from each member;
5. The Proposal should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations;
6. A Bidder who has applied for a Project in its individual capacity or as part of a Consortium cannot participate as a member of any other Consortium applying for the Project;
7. The members of the Consortium shall enter into a Joint Bidding Agreement for the purpose of execution of the Concession Agreement in the event of being selected.

The Joint Bidding Agreement should, inter alia:

(i) Convey the intent to form an SPV, solely for the purpose of domiciling the Commercial Facility and no other purpose, with shareholding/ ownership equity commitment(s) in accordance with this RFP, which would enter into

the Concession Agreement and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, in case the concession is awarded to the Consortium;

(ii) Clearly outline the proposed roles and responsibilities, if any, of each member;

(iii) Commit the minimum equity stake to be held by each member;

(iv) Commit that each of the members, whose experience will be evaluated for the purposes of this RFP, shall subscribe to 26% (twenty six per cent) or more of the paid up and subscribed equity of the SPV;

(v) Members of the Consortium undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity of the SPV at all times until the commencement of the commercial operation date of the Commercial Facility; and

(vi) Include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Commercial Facility until the Financial Close of the Commercial facility is achieved in accordance with the Concession Agreement.

The Joint Bidding Agreement entered into between the members of the Consortium should be specific to this Project and should contain the above requirements.

2.3.3. While Qualification is open to persons from any country, the following provisions shall apply:

(a) Where, on the date of the Bid, not less than 25% (twenty five percent) of the aggregate issued, subscribed and paid up equity share capital in a Bidder or its Member is held by persons resident outside India or where an Bidder or its Member is controlled by persons resident outside India; or

(b) if at any subsequent stage after the date of the Bid, there is an acquisition of not less than 25% (twenty five percent) of the aggregate issued, subscribed and paid up equity share capital or control, by persons resident outside India, in or of the Bidder or its Member;

(c) then the Eligibility of such Bidder shall be subject to approval of the Authority from national security and public interest perspective. The decision of the Authority in this behalf shall be final and conclusive and binding on the Bidder.

(d) The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Authority shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, or any substitute thereof, as in force on the date of such acquisition.

(e) The Bidder shall promptly inform the Authority of any change in the shareholding, as above, and failure to do so shall render the Bidder liable for disqualification from the Bidding Process.

2.3.4. Any entity which has been barred by BDA, Government of Karnataka (GoK), any other State Government in India (SG) or Government of India (GoI), or any of the agencies of GoK/ SG/ GoI participating in projects (BOT or otherwise) and the bar subsists as on the Proposal Due Date, would not be eligible to submit a Proposal, either individually or as member of a Consortium.

2.3.5. An international Bidder bidding individually or as a member of a Consortium shall ensure that Power of Attorney is legalised/apostille by appropriate authority notarised in the jurisdiction where the Power of Attorney is being issued and requirement of Indian Stamp Act is duly fulfilled.

2.3.6. Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the draft concession agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Concession Agreement.

2.3.7. Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.

2.3.8. The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language.

2.3.9. The Bidding documents including this RFP and all attached documents, provided by the Authority are and shall remain or become the property of the Authority (BDA) and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause shall also apply mutatis mutandis to Bids and all other documents submitted by the Bidders, and the Authority (BDA) will not return to the Bidders any Bid, document or any information provided along therewith.

2.3.10. This RFP is not transferable.

2.3.11. Any award of Project pursuant to this RFP shall be subject to the terms of Bidding Documents.

2.4. Number of Proposals

Each Applicant shall submit only one (1) Proposal, in response to this RFP. Any bidder, who submits more than one Proposal, will be disqualified.

2.5. Proposal Preparation Cost

The Bidder shall be responsible and shall pay for all of the costs associated with the preparation of its Proposal and its participation in the bidding process. BDA will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the bidding process.

2.6. Project Inspections and Visit to the Site/s

2.6.1. During the Proposal Stage, Bidders would be expected to examine the Project in further detail, and carry out such studies as may be required to submit Proposals for the implementation of the Project. The cost of visiting the site shall be at their own expense. The site inspection certificate issued by concerned Assistant Executive Engineer of Respective sub division counter signed by Executive Engineer of Markets division (Infra Division) should be obtained and submitted/uploaded failing which the bid will be rejected.

2.6.2. The Bidder would be granted permission by BDA for visit of the Commercial Facility on receipt of a formal written request, reasonably in advance of the proposed date of visit.

2.6.3. It is desirable that each Bidder submits its Proposal after visiting the site and ascertaining for itself the location, surroundings, or any other matter considered relevant by it.

2.6.4. It would be deemed that by submitting the Proposal for RFP, the Bidder has:

a. made a complete and careful examination of terms & conditions / requirements, and other information set forth in this RFP document
b. received all such relevant information as it has requested from BDA; and
c. made a complete and careful examination of the various aspects of the Project including but not limited to:
    i. the property ;
    ii. structures which are not to be altered
    iii. availability of parking space and prospects of developing the same in future;
    iv. existing facilities and structures;
    v. the conditions of the access roads and utilities in the vicinity of the Project Site;
    vi. conditions affecting transportation, access, disposal, handling and storage of materials;
    vii. all other matters that might affect the Bidder's performance under the terms of this RFP document.

2.6.5. BDA shall not be liable for any mistake or error on the part of the Bidder in respect of the above.

2.7. Right to Accept or Reject any of the Proposals

2.7.1. Notwithstanding anything contained in this RFP, BDA reserves the right to accept or reject any Proposal or to annul the bidding process or reject all Proposals, at any time without any liability or any obligation for such rejection or annulment, without assigning any reasons.

BDA reserves the right to reject any Proposal if:

a. at any time, a material misrepresentation is made or discoverd, or

b. the Bidder does not respond promptly and diligently to requests for supplemental information required for the evaluation of the Proposal

2.7.2. Rejection of the Proposal by BDA as aforesaid would lead to the disqualification of the Bidder. If such disqualification / rejection occurs after the bids have been opened and the best bidder gets disqualified / rejected, then BDA reserves the right to:

a. either invite the Bidder with the next best offer for negotiations,

OR

b. take any such measure as may be deemed fit in the sole discretion of BDA, including annulment of the bidding process.

2.7.3. BDA reserves the right to invite revised Proposals from Bidders with or without amendment of the RFP at any stage, without liability or any obligation for such invitation and without assigning any reason.

2.8. Contents of RFP

2.8.1. The RFP Document comprises Disclaimer set forth herein above the contents as listed below, and would additionally include any Addenda issued in accordance with Clause 2.8.

1. Introduction and Information to Bidders
2. Bidding Process including Scope of Proposal, Instructions to Bidders

3. Criteria for Qualification
4. Criteria for Evaluation
5. Schedule of Bidding Process
6. Procedure for e-tendering
7. Pre-bid meeting
8. Miscellaneous

Appendices

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(ii) Format for Bid Security/Earnest Money Deposit - A**ppendix - B**

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(x) Format for Power of Attorney for signing of Bid **- Appendix -J**

(xi) Power of Attorney for Lead Member of Consortium **- Appendix -K**

(xii) Joint Bidding Agreement **- Appendix -L**

2.9. Amendment of RFP

2.9.1. At any time prior to the Proposal Due Date, BDA may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP Document by the issuance of Addenda.

2.9.2. Any Addendum thus issued will be sent in writing to all those who have purchased the RFP Document. Bidders shall promptly acknowledge receipt thereof to BDA.

2.9.3. In order to provide the Bidders a reasonable time to examine the Addendum, or for any other reason, BDA may, at its own discretion, extend the Proposal Due Date.

2.10. Clarifications

2.10.1. A prospective Bidder requiring any clarification on the RFP document may notify BDA in writing by e-mail / registered post / courier to the officer designated below, with identification/ title:

"Queries/Request for Additional Information: RFP for “Construction of Commercial Complex at CA No. 7 in HMT Employees Housing Building Co-Operative Society Ltd BDA Approved Layout, Nagasandra Village SY NO. 54, 57, 59 AND 60, Bangalore North Taluk” on a Concession Model through private participation (PPP) on Design, Build, Finance, Operate, Lease and Transfer (the "DBOLT") basis”

The Executive Engineer,
Markets Division,
Bangalore Development Authority,
T. Chowdaiah Road,
Kumara Park West,
Bangalore – 560020

2.10.2. The Bidders should send in their queries latest by the Last date of receiving queries mentioned in Section 5, Schedule of Bidding Process. BDA would endeavour to respond to the queries by the date mentioned in the Schedule of Bidding Process. The responses will be sent through E-mail / post. BDA will forward its responses, at its sole discretion, to all purchasers of the RFP Document, which would include a description of the enquiry and the response of BDA without identifying the source of the enquiry.

D. Preparation and Submission of Bids / Proposal

2.11. Language and Currency

2.11.1. The Proposal and all related correspondence and documents should be written in the English language. Supporting documents and printed literature furnished by Bidder with the Proposal may be in any other language provided that they are accompanied by appropriate translations of the pertinent passages in the English language. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Proposal, the English language translation shall prevail.

2.11.2. The currency for the purpose of the Proposal shall be the Indian Rupee (INR). BDA reserves the right to use any suitable exchange rate, if the Proposal is submitted in any other currency for the purpose of uniformly evaluating all Bidders.

2.12. Bid Security / Earnest Money Deposit (EMD)

2.12.1. Proposals would need to be accompanied by a bid security for an amount of Rs.30,00,000 /- (Rupees Thirty Lakhs) ("Bid Security"). The Bid Security shall be kept valid throughout the Proposal Validity Period and would need to be extended if so required by BDA for any extension in Proposal Validity period.

2.12.2. The Bidders will have an option to provide Bid Security (EMD) through any of the four modes of e-payment as specified in the e-procurement portal (i.e. in the form of a Demand Draft/ Fixed Deposit/on-line transfer/ Bank Guarantee) (See Format in Appendix B). The Bid shall be summarily rejected if it is not accompanied by the Bid Security (EMD).

2.12.3. The Bid Security shall be returned to the unsuccessful Bidders within a period of four (4) weeks from the date of announcement of the Successful Bidder. The Bid Security submitted by the Successful Bidder shall be retained till it has provided a Performance Security under the Concession Agreement.

2.12.4. The Bid Security (EMD) shall be forfeited in the following cases:

a. If the Bidder modifies or withdraws its Proposal except as provided in Clause 2.18.
b. If the Bidder withdraws its Proposal during the interval between the Proposal Due Date and expiration of the Proposal Validity Period.
c. If any information or document furnished by the Bidder turns out to be misleading or untrue in any material respect
d. If the Bidder does not execute the Concession Agreement within the time frame mentioned

2.13. Validity of Proposal

2.13.1. Proposal shall remain valid for a period not less than 120 days from the Proposal Due Date ("Proposal Validity Period"). BDA reserves the right to reject any Proposal, which does not meet this requirement.

2.14. Extension of Validity of Proposal

2.14.1. In exceptional circumstances, prior to expiry of the original Proposal Validity Period, BDA may request Bidders to extend the Proposal Validity Period for a specified additional period.

2.14.2. Prior to expiry of the Proposal Validity Period, BDA may request the Bidders to extend the period of validity for a specified additional period. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder agreeing to the request will not be allowed to modify its Proposal, except as provided under Clause 2.18 but would be required to extend the validity of its Bid Security for the period of extension.

2.14.3. The Successful Bidder shall, where required, extend the Proposal Validity Period till the date of execution of the Concession Agreement.

2.15. Format and Signing of Proposal

2.15.1. The Bidder shall provide all the information and the documents as per this RFP and in the required format in electronic mode through e-portal. The Authority will accept only those Bids that are received in the required formats and complete in all respects. Incomplete and/or conditional Bids shall be liable to rejection.

2.15.2. All the documents of the Proposal under this RFP shall be uploaded on e-procurement platform: http://www/eproc.karnataka.gov.in using digital signature.

2.16. Marking and Submission of Bids

2.16.1. The Bidder shall upload the Technical Bid & Financial Bid documents on e-procurement platform in the specified formats.

2.16.2. The documents shall be marked as indicated below:

E- Cover 1: Technical Bid

1. Covering Letter-Cum-Project Undertaking - **Appendix -A**;
2. Bid Security - **Appendix –B**;
3. Anti-Collusion Certificate - **Appendix –C**;
4. Details of Bidder **- Appendix –D;**
5. Financial Capability of Bidder - **Appendix- E;**
6. Concept Proposal **for purpose of evaluation- Appendix F;**
7. Format for Financial Proposal **- Appendix G;**
8. Details of Property Schedule **- Appendix H;**
9. Scope of Work – **APPENDIX I;**
10. Power of Attorney for signing the Bid as per the format at **Appendix-J**;

11. If applicable, Power of Attorney for Lead Member of Consortium as per the format at **Appendix-K;**
12. If applicable, Joint Bidding Agreement for Consortium as per the format at **Appendix-L**;
13. Copies of Bidder's duly audited balance sheet and profit and loss statement for preceding 5 years;

14. Certificate of incorporation, copy of Memorandum and Articles of Association, if the Bidder is a body corporate, and if a partnership then a copy of its partnership deed or any other relevant documents pertaining to incorporation;

Concept Proposal

The Concept Proposal shall set out the following components:

a. Overall concept plan including landscaping in the Commercial Complex.
b. Floor Plans.
c. Area Statement.
d. Entry / exit points and movement pattern for Commercial Complex
e. Basement plans showing car parking
f. Perspectives of proposed Commercial Complex with car parking pattern

Concept proposal for Project shall be submitted (in PDF format) as per details provided in Appendix F

15.

2.16.3. In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the Audited Annual Reports for 5 (five) years preceding the year for which the Audited Annual Report is not being provided.

E- Cover 2: Financial Bid

Financial proposal as per the format enclosed as Appendix G

2.16.4. The Bidder shall submit the following documents physically:

a. Original Power of Attorney for signing the Bid as per format;
b. if applicable, Original Power of Attorney for Lead Member of Consortium as per the format;
c. if applicable, Original Joint Bidding Agreement for Consortium;
d. Original Bank Guarantee towards bid security / EMD;

The documents listed above shall be placed in a cover, which shall be sealed. The cover shall clearly bear the identification “Bid for “Construction of Commercial Complex at CA No. 7 in HMT Employees Housing Building Co-Operative Society Ltd BDA Approved Layout, Nagasandra Village SY NO. 54, 57, 59 AND 60, Bangalore North Taluk” on a Concession Model through private participation (PPP) on Design, Build, Finance, Operate, Lease and Transfer (the "DBOLT") basis” and shall clearly indicate the name and address of the Bidder. In addition, the Bid Due Date should be indicated on the right hand top corner of the cover.

2.16.5. The cover shall be addressed to the following officer and shall be submitted at the respective address before opening of Technical Bids on E-procurement portal:

Address:

The Executive Engineer,
Markets Division,
Bangalore Development Authority,
T. Chowdaiah Road,
Kumara Park West,
Bangalore - 560020

2.17. Proposal Due Date

2.17.1. Proposals should be submitted before 1600 hours IST on the Proposal Due Date mentioned in the Schedule of Bidding Process, to the address provided in Clause 2.15.5 in the manner and form as detailed in this RFP. Proposals submitted by either facsimile transmission or telex will not be acceptable.

2.17.2. BDA may, in exceptional circumstances, and at its sole discretion, extend the Proposal Due Date by issuing an Addendum in accordance with Clause 2.8 uniformly for all Bidders.

2.18. Late Proposals

2.18.1. E-procurement platform: http://www/eproc.karnataka.gov.in, shall not allow submission of any Bid after the prescribed date and time. Physical receipt of documents listed at relevant Clause of the RFP after the prescribed date and time shall not be considered and the bid shall be summarily rejected.

2.19. Modifications/ Substitution/ Withdrawal of Proposals

2.19.1. The Bidder may modify, substitute or withdraw its e- Bid after submission prior to the Bid Due Date. No Bid can be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date & Time.

2.19.2. Withdrawal of a Proposal during the interval between the Proposal Due Date and expiration of the Proposal Validity Period would result in forfeiture of the Bid Security.

2.20. Pre-Proposal Meeting(s)

2.20.1. To clarify and discuss issues with respect to the Project and the RFP, BDA will hold a Pre-Proposal meeting on the date prescribed in section 5.

2.20.2. Prior to the Pre-Proposal meeting, the Bidders may submit a list of queries, if any, on the Project requirements and/or the Concession Agreement. Bidders must formulate their queries and forward the same to BDA as per RFP Time Schedule

prior to the meeting. BDA may, in its sole discretion or based on inputs provided by Bidders that it considers acceptable, amend the RFP.

2.20.3. Bidders may note that BDA will not entertain any deviations to the RFP at the time of submission of the Proposal or thereafter. The Proposal to be submitted by the bidders would have to be unconditional and the Bidders would be deemed to have accepted the terms and conditions of the RFP with all its contents including the Draft Concession Agreements. Any conditional Proposal shall be regarded as non-responsive and would be liable for rejection.

2.20.4. Attendance of the Bidders at the Pre-Proposal meeting(s) is not mandatory. However, subsequent to the meeting, BDA may not respond to queries from any Bidder.

2.20.5. All correspondence / enquiries should be submitted to the following in writing by fax/registered post / courier:

The Executive Engineer,
Markets Division,
Bangalore Development Authority,
T. Chowdaiah Road,
Kumara Park West,
Bangalore - 560020

2.20.6. No interpretation, revision, or other communication from BDA regarding this solicitation is valid unless it is in writing and is signed by an officer not below the rank of Executive Engineer, BDA. BDA may choose to send to all Bidders, written copies of BDA's responses, including a description of the enquiry, but without identifying its source, to all the Bidders.

E. Evaluation of Proposal

2.21. Proposal Opening

2.21.1. BDA would open the Proposals (E-cover -1) on 20.05.2025 through online process. E-Cover -1 (Technical Bid / Qualification Bid) of only those Bidders shall be online opened whose documents listed at Clause 2.15.2 above of the RFP, have been physically received.

2.21.2. Proposals for which an acceptable notice of withdrawal has been submitted in accordance with the terms of RFP shall not be opened.

2.21.3. BDA would subsequently examine and evaluate Proposals in accordance with the criteria set out in Section 3 and 4.

2.21.4. BDA reserves the right to reject any Proposal, if:

a. at any time, a material misrepresentation is made or discoverd;

or

b. the Bidder does not respond promptly and diligently to requests for supplemental information required for the evaluation of the Proposal.

2.21.5. Rejection of Bids

Notwithstanding anything contained in this RFP, the Authority reserves the right to reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

2.21.6. The Authority reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

2.22. Confidentiality

Information relating to the examination, clarification, evaluation, and recommendation for the Bidders shall not be disclosed to any person not officially concerned with the process. BDA will treat all information submitted as part of Proposal in confidence

and would require all those who have access to such material to treat the same in confidence. BDA will not divulge any such information unless it is ordered to do so by any authority pursuant to applicable law or order of a competent court or tribunal, which requires its disclosure.

2.23. Tests of Responsiveness

2.23.1. Prior to evaluation of Proposals, BDA will determine whether each Proposal is responsive to the requirements of the RFP. A Proposal shall be considered responsive if the Proposal:

a. is received before 1600 Hrs (IST) on the Proposal Due Date including any extension thereof.
b. Technical Bid is accompanied by the Bid Security as specified in the RFP;
c. Technical Bid is accompanied by the Power of Attorney as specified in the RFP;
d. Technical Bid is accompanied by Power of Attorney for Lead Member of Consortium and the Joint Bidding Agreement as specified in the RFP, if so required;
e. Technical Bid contain all the information (complete in all respects);
f. Technical Bid does not contain any condition or qualification; and
g. it is not non-responsive in terms hereof.
h. it provides the information in reasonable detail. ("Reasonable Detail" means that, but for minor deviations, the information can be reviewed and evaluated by BDA without communication with the Bidder). BDA reserves the right to determine whether the information has been provided in reasonable detail.
i. there are no inconsistencies between the Proposal and the supporting documents.

The BDA (Authority) reserves the right to reject any Technical Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Bid.

2.23.2. A Proposal that is substantially responsive is one that conforms to the preceding requirements without material deviation or reservation. A material deviation or reservation is one which,

a. affects in any substantial way, the scope, quality, or performance of the Project/s, or
b. limits in any substantial way, inconsistent with the RFP document, BDA's rights or the Bidder's obligations under the Concession Agreements, or
c. unfairly affects the competitive position of other Bidders presenting substantially responsive bids.

2.23.3. BDA reserves the right to reject any Proposal which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by BDA in respect of such Proposals.

2.24. Clarifications

To assist in the process of evaluation of Proposals, BDA may, at its sole discretion, ask any Bidder for clarification on its Proposal or substantiation of any of the submissions made by the Bidder. The request for such clarification or substantiation and the response shall be in writing or by e-mail / facsimile. No material change in the substance of the Proposal would be permitted by way of such clarification / substantiation.

2.25. Consultant(s) or Advisor(s)

To assist in the examination, evaluation, and comparison of Proposals, BDA may utilise the services of consultant(s) or advisor(s).

2.26. Evaluation of Technical Bids and opening and evaluation of Financial Bids

2.26.1. Evaluation of Proposals shall be carried out as indicated below and in more detail in Section 3 and 4.

2.26.2. Only those Bidders who meet the eligibility criteria specified in relevant Clause above shall qualify for evaluation. Bids of firms/ consortia who do not meet these criteria shall be rejected.

2.26.3. A Bidder’s competence and capability is proposed to be established by the following parameters:

(a) Past Experience;

(b) Financial Capacity; and

(c) Concept Proposal of the Project Facility for evaluation of Technical Capability;

Cover -1:

- The proposals would be checked for responsiveness to the RFP. Such Bidders whose proposals have been found to be responsive would need to satisfy the qualification criteria as per Section 3

- Project Technical Concept Proposals of such Bidders who satisfy the Experience Criteria and Financial Capacity, would be evaluated as set out in Appendix F. Bidders would be required to assist and make presentations in front of the Technical Committee formed by BDA on their Technical Proposals at this stage if needed.

Cover -2:

- Financial proposals of only those Bidders whose Technical Proposals meet the requirements of the Technical Committee would be considered for evaluation.

2.26.4. The Bidder offering the highest financial proposal would be declared as the Successful Bidder.

2.27. Notifications

BDA will notify the Successful Bidder by e-mail / facsimile and by a Letter of Acceptance (LoA) that the Proposal has been accepted.

2.28. Letter of Acceptance (LoA) and Execution of Concession Agreement

2.28.1. Within two (2) weeks from the date of issue of the LoA, the Successful Bidder(s) shall acknowledge the LoA. The Successful Bidder(s) shall execute the Concession Agreement and submit the Performance Security within six (6) weeks of the issue of LoA or within such further time as BDA may agree to in its sole discretion.

2.28.2. Failure of the Successful Bidder to abide by the conditions of the LoA and enter into the Concession Agreement with BDA within a period of six weeks from the date of issuance of the LoA would constitute sufficient grounds for the annulment of LoA. In such event, BDA reserves the right to:

a. either invite the Bidder with the next best offer

OR

b. take any such measure as may be deemed fit in the sole discretion of BDA, including annulment of the bidding process and appropriation of the past security of the successful bidder.

BDA will promptly notify other Bidders that their Proposals have been unsuccessful and their Bid Security will be returned as promptly, as possible as, and in any case not later than four (4) weeks from the date of announcement of the Successful Bidder.

2.29. Performance Security

2.29.1. At the time of execution of Concession Agreement, the Successful Bidder shall furnish Performance Security 5% of awarded price by way of Bank Guarantee or Fixed Deposit Receipt in favour of the Commissioner, BDA, as required under the Concession Agreement. The Performance Security handed over to BDA by the Concessionaire upon execution of the Concession Agreement shall be valid till the end of the Concession period.

3. Criteria for Qualification

3.1. Evaluation Parameters for qualification

3.1.1. The Bidders shall have to be eligible bidders as referred to under Clause 2.2

The Bidder's competence, capability and eligibility are proposed to be established by the following parameters:

A. Experience

B. Financial capability in terms of

- Net worth
- Average Turnover

C. Technical Capability in terms of

- Concept Proposal for Project facility

3.1.2. On each of these parameters, the Bidder would be required to meet the qualification criteria as detailed in this Section.

A. Experience

3.2. Qualification Criterion for Experience

3.2.1. The bidders can qualify by satisfying the criteria under either of the following categories.

Category A: Project experience on Eligible Projects in real estate sector that qualify under this Category:

Experience	Documents to be submitted in proof
Developed and commissioned a commercial building project with a built up area of minimum two lakhs square feet and of value of the project not less than Rs. 125.00 Crores, during the last	▪ Occupancy certificate as issued by a statutory authority ▪ Sanctioned copy of the building plan indicative of the built up area; ▪ Bidder shall provide an

five financial years. (Only properties developed under sole ownership will be considered for evaluation). Eligible projects in real estate sector would be deemed to include commercial complexes, Information Technology Complex and Malls.	Auditor's Certificate specifying the cost of the project; (Above documents have to be in the name of the bidder or in the name any one of the members of Consortium)

Category B: Construction experience on Eligible Projects, for having provided its output or services to a Government body or public sector that qualify under this Category:

Experience	Documents to be submitted in proof
Substantially completed a building project with a minimum built up area of two lakh sq.ft of and of value of the project not less than Rs. 125.00 Crores, during the last five years. (Only properties undertaken as prime contractor will be considered for evaluation). Eligible Project would be deemed to include commercial, Market complexes, schools, colleges.	• Work done certificate, for a minimum value of Rs. 125.00 Crores, from a government agency or public body for whom the project was undertaken; • Building Plan indicative of the built up area in the event of built up area not mentioned in the work done certificate; (Above documents have to be in the name of the bidder or in the name any one of the members of Consortium)

For the purpose of evaluation, properties shall be defined as public utility buildings and other government buildings.

Category C: Concessionaire experience on Eligible Projects undertaken on Concession Fee Model (as Concessionaire), i.e. as a PPP project on BOT, BOLT, BOO,

BOOT, DBFOT, DBOLT or such other similar basis for providing its output or services to a Government Body, public and semi public sector, Co-operative Federations, Co-operative Societies, Trusts, on a quarterly/annual Concession Fee model that qualify under this Category:

Experience	Documents to be submitted in proof
Appointed as a Concessionaire in any of the DBOT Projects in the past, on a quarterly/annual Concession Fee basis with a land area of not less than 100000 (one lakh) sq. Ft. The entity claiming experience should have held, in the company owing the Eligible Project, a minimum of 26% (twenty six per cent) equity for a period of at least 2 years;	• A copy of the concession Agreement / lease Deed/ Lease agreement signed by the Concessioning Authority, preferably from a government agency or public body or semi-public body or Co-operative Federations/Societies, or Trusts who appointed the Concessionaire under DBOT model; • The Bidder should provide details of appointment of Concessionaire under its own name or under the name of the Company which was part of Consortium where Bidder played a role of CEO or Director or shareholder of such member of the Concessionaire Consortium. • Bidder shall provide an Auditor's Certificate specifying the extent of land allotted/leased under concession Fee payment model. • Auditor's Certificate specifying the role of the bidder in the

	consortium such as CEO/Director/Share holder/Member.

For the purpose of evaluation, properties shall be defined as entertainment complexes (multiplex, cinema hall, auditorium, museum, games complex with video games, bowling alleys, and snooker / billiards area), shopping malls, amusement parks, offices and other commercial complexes.

3.2.2. In case of a Consortium, at least one member should satisfy the above Qualification Criteria for experience.

3.2.3. Applicant shall quote experience in respect of any eligible project under any one of the categories or under two categories to affirm their experience.

3.2.4. The Bidder should furnish the details of eligible experience as stated in the above 'A, B, C' Categories.

3.2.5. Bidder's past experience shall be measured and stated in terms time period of 5 years. The Experience for time period for an Eligible Project in a given category would be the eligible period, and multiplied by the applicable factor in Table 3.2.6 below.

3.2.6. Table: Factors for time period of past experience across categories

Factor	
Category A	2.00
Category B	1.00
Category C	4.00

B. Financial Capability

3.3. Qualification Criteria for Financial Capability

3.3.1. For the purpose of Qualification, a Bidder would be required to demonstrate the Threshold Financial Capability measured on the criteria as listed below. The Bidder would have to satisfy at least two out of the given three criteria.

Financial Capability	Documents to be submitted
1. Net worth ((Subscribed and Paid-up Capital + Reserves) - (Revaluation reserves + Miscellaneous expenditure not written off)) of the Bidder as of 31st March 2025 shall be at least equal to Rs. 2000 lakhs. Any one of the member can meet the criteria in case of consortium.	▪ Net worth statement as of 31st March 2025 duly certified by a Chartered accountant. ▪ (Above documents have to be in the name of the bidder or in the name any one of the members of Consortium)
2. The aggregate net cash accruals (Profit after Tax + Depreciation + Non cash Expenses) of the Bidder for the last two completed financial years shall be at least equal to Rs. 2000 lakhs. Any one of the member can meet the criteria in case of consortium.	• Audited Balance Sheets duly certified by a Chartered accountant. • (Above documents have to be in the name of the bidder or in the name any one of the members of Consortium)
3. The sales turnover (Total revenues as indicated in the financial statement) of the Bidder in any one of the last five financial years shall be at least Rs. 10000 lakhs). Any one of the member can meet the criteria in case of consortium.	

3.3.2. In case of a Consortium, financial capability of at least one member or all members as a combined, should satisfy the above Qualification Criteria for financial capability. The

Bidder should provide the Financial Capability based on its own financial statements. Financial Capability of the Bidder's parent company or its subsidiary or any associate company will not be considered for computation of the Financial Capability of the Bidder.

C. Technical Capability and similar experience

3.4. The Bidder shall submit a Concept Proposal for Project Facility (in pdf format) setting out the approach to the Project Facility as per Clause 2.15 and it's sub-clauses. The design and approach for implementing the Project shall be as per the applicable statutes.

3.4.1. The concept Proposal shall set out the following components:

a. Overall concept plan in the Commercial Facility;
b. Floor Plans;
c. Passages and Fire Safety plans;
d. Entry / exit points and movement pattern for Commercial facility;
e. Handicapped access to all areas;

3.4.2. The scoring method for qualification criteria would be as per the following table.

Sl. No.	Parameter	Maximum Marks
1	Overall concept plan	30
2	Detailed Floor Plans, sections and Area Statements	20
3	Perspective Views	20
4	Similar experience as a Concessionaire	20
5	Adherence to NBC Guidelines and Building Byelaws	10
	TOTAL MARKS	100

3.5. Special Conditions for Consortium.

3.5.1. The Consortium shall incorporate a company either under the Companies Act or Limited Liability Partnership or a Partnership Firm which shall act as a special purpose vehicle (SPV). Such joint venture company (SPV) would enter into the agreement and subsequently carry out all the responsibilities of the successful bidder in terms of the agreement, (in case the Project is awarded).

3.5.2. The Lead Member shall commit to hold a minimum equity stake (in the SPV) equal to 26% of such company / LLP / Partnership Firm, AND the Associate member(s) would commit to hold a minimum equity stake equal to 11% of such company.

4. Criteria for Evaluation

4.1. Evaluation Parameters

4.1.1. The Qualification Criterion, under Cover-1, shall be the Experience, Financial Capabilities and Technical Capabilities as per Concept Proposals, and bidders shall have to obtain minimum marks in the concept proposal submitted in the first cover in the form of drawings and elevations etc. as set out in Appendix F, to qualify in the technical bid, as per this RFP. Second cover shall be opened of bidders whose technical bids submitted in the First cover are declared as successful.

4.1.2. The Financial proposal comprises the following component payable to BDA:

Concession Fee: The annual Concession Fee shall constitute the sole criteria for evaluation of bids subject Clause 2 and it's sub-clauses. The project will be awarded to the bidder quoting highest Concession Fee. Concession Fee shall be payable to BDA in equated annual instalments as per the Financial proposal set out in Appendix G (Format for Financial proposal). The Selected Bidder shall make payment of Concession Fee in equated annual instalments in accordance with the Draft Concession Agreement.

4.1.3 The Financial proposals of those bidders, whose technical proposals are found to be acceptable by BDA, would be ranked in the descending order and the Bidder quoting the highest Concession Payment would be declared as the Successful / Preferred Bidder.

4.1.4 In the event that two or more Bidders quote exactly the same highest Concession Payment, then BDA reserves the right either to,

(a) Select the bidder with the higher scoring in the Technical Proposal among the two, or

(b) Invite fresh Proposals from these Bidders, or

(c) Take any appropriate action for the implementation of the Project.

4.2. Contacts during Bid Evaluation

Bids shall be deemed to be under consideration immediately after they are opened and until such time the Authority makes official intimation of award/ rejection to the Bidders. While the Bids are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain, save and except as required under the Bidding Documents, from contacting by any means, the Authority and/ or their employees/ representatives on matters related to the Bids under consideration.

4.3. Correspondence with Bidder

Save and except as provided in this RFP, the Authority shall not entertain any correspondence with any Bidder in relation to the acceptance or rejection of any Bid. Any information contained in the Bid shall not in any way be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it on the basis of such information.

4.4. FRAUD AND CORRUPT PRACTICES

4.4.1. The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Agreement, the Authority may reject a Bid, withdraw the LOA, or terminate the Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder, if it determines that the Bidder, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other

right or remedy that may be available to the Authority under the Bidding Documents and/ or the Agreement, or otherwise.

4.4.2. Without prejudice to the rights of the Authority under Clause 4.4.1 hereinabove and the rights and remedies which the Authority may have under the LOA or the Agreement, or otherwise if a Bidder or Contractor, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the Agreement, such Bidder, at the sole and absolute discretion of the Authority, shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 1 (one) year from the date such Bidder, or Contractor, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

5. Schedule for Bidding Process

5.1. BDA would endeavour to adhere to the following schedule:

Milestones	Dates
Uploading of Bid Documents	05.05.2025
Last date for receiving queries	09.05.2025
Pre-Bid meeting	12.05.2025 at 16.00 Hrs
Authority (BDA) Response to queries latest by	14.05.2025
Bid Due date for online submission of Bid (Technical Bid and Financial Bid) on e-procurement platform at: http://www/eproc.karnataka.gov.in	19.05.2025 up to 16.00 hrs.
Opening of Technical Bid	20.05.2025 up to 16.00 hrs.
Opening of Financial Bid	Will be intimated to Eligible Bidders

6. Procedure for e-tendering

6.1. Accessing/ Purchasing of Bid documents

6.1.1. It is mandatory for all the Bidders to have class-III Digital Signature Certificate (DSC) (in the name of Authorized Signatory / Firm or Organization / Owner of the Firm or organisation) from any of the licensed Certifying Agency (Bidders can see the list of licensed CAs from the link www.cca.gov.in) to participate in e-tendering of the Authority.

6.1.2. DSC should be in the name of the bidder or authorized signatory or any one of the members of consortium. The Bidder shall submit document in support of the class III DSC. In case the digital signatory is not same as the bidder or member of consortium, the bid shall be considered non-responsive.

6.1.3. To participate in the bidding, it is mandatory for the Bidders to get registered their firm / Consortium with e-procurement portal of the Authority http://www/eproc.karnataka.gov.in to have user ID & password which has to be obtained by submitting an annual registration charges to the e-tendering service provider through their e-payment gateway. Validity of online registration is one year.

6.1.4. Registration with e-procurement portal of the Authority should be valid at least up to the date of submission of Bid. Bids can be submitted only during the validity of registration.

6.1.5. If the firm / member of Consortium is already registered with e-tendering service provider of the Authority, and validity of registration is not expired the firm / Consortium is not required a fresh registration.

6.1.6. The complete Bid document can be viewed / downloaded by the Bidder from e-procurement portal of the Authority http://www/eproc.karnataka.gov.in from *****to ***** (upto ***Hrs. IST).

7. Pre-bid meeting

7.1. Pre-Bid conference of the Bidders shall be convened at the designated date, time and place. A maximum of two representatives of prospective Bidders shall be allowed to participate on production of authority letter from the Bidder.

7.2. During the course of Pre-Bid meeting(s), the Bidders will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

8. Miscellaneous

8.1. The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Bengaluru shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.

8.2. The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;

(a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;

(b) consult with any Bidder in order to receive clarification or further information;

(c) retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Bidder; and/ or

(d) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.

8.3. It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection with the Bidding Process and waives, to the fullest extent permitted by applicable laws, any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

APPENDIX A (Format for Covering Letter-Cum-Project Undertaking)

Note: On the Letterhead of the Bidder

To

The Executive Engineer,
Infrastructure Division (Markets Division),
Bangalore Development Authority,
T. Chowdaiah Road, Kumara Park West,
Bangalore – 560 020

Dear Sir/s,

Ref: Bid for "Construction of Commercial Complex at CA No. 7 in HMT Employees Housing Building Co-Operative Society Ltd BDA Approved Layout, Nagasandra Village SY NO. 54, 57, 59 AND 60, Bangalore North Taluk" on a Concession Model through private participation (PPP) on Design, Build, Finance, Operate, Lease and Transfer (the "DBOLT") basis"

With reference to your RFP document, I/we, having examined the Bidding document and understood its contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.

1. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Concessionaire for the aforesaid Project, and we certify that all information provided in the Bid is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.
2. I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Bid.
3. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.

I/ We declare that:

4. I/ We have examined and have no reservations to the Bidding documents, including any Addendum issued by the Authority.

I/ We do not have any conflict of interest in accordance with terms of the RFP document;

5. I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in respect of any tender or request for Bid issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State;

6. I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of the RFP document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.

7. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with terms of the RFP document.

8. I/ We believe that we/ our Consortium/ proposed Consortium satisfy (ies) the Net Worth criteria and meet(s) all the requirements as specified in the RFP document.

9. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium submitting a Bid for this Project.

10. I/We acknowledge and undertake that our Consortium is qualified in stage-1 on the basis of Technical Capacity and Financial Capacity of those of its Members who shall, for the period of 2 (two) years from the date of commercial operation of the Project, hold equity share capital not less than 26% (twenty six percent) of the subscribed and paid up equity of the Concessionaire. We further agree and acknowledge that the aforesaid obligation shall be in addition to the obligations contained in the Concession Agreement in respect of Change in Ownership.

11. I/We further acknowledge and undertake that our Consortium is qualified in stage-2 on the basis of Technical Proposal of those of bidders who shall score more than 65 marks and we further agree to the terms of the RFP that the Consultancy Firm or the Technical Committee appointed / formed by BDA shall scrutinize such Technical Proposals of Bidders and award the marks and the Bidders scoring less than 65 marks will be disqualified and their financial proposal shall not be opened.

12. I/ We understand that the Selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956/2013, or shall incorporate as such prior to execution of the Concession Agreement.

13. In the event of my/ our being declared as the Selected Bidder, I/We agree to enter into a Concession Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.

14. I/We have studied all the Bidding Documents carefully and also surveyed the project site. We understand that except to the extent as expressly set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority

or in respect of any matter arising out of or relating to the Bidding Process including the award of Concession.

15. I/We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/We shall have any claim or right of whatsoever nature if the Project / Concession is not awarded to me/us or our Bid is not opened or rejected.

16. The Bid Project Cost has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft Concession Agreement, our own estimates of costs and after a careful assessment of the site and all the conditions that may affect the Project cost and implementation of the Project.

17. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.

18. We, the Consortium Members agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement till occurrence of Financial Close in accordance with the Concession Agreement.

19. I/We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.

20. I/ We hereby submit our Bid as indicated in Financial Bid for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement

21. In witness thereof, I/ we submit this Bid under and in accordance with the terms of the RFP document.

Signature of the Authorised Person

Date ……..

APPENDIX B

FORMAT FOR BID SECURITY

BANK GUARANTEE FOR EARNEST MONEY DEPOSIT

WHEREAS ---------- (hereinafter called “the Bidder”) has submitted his bid dated ---------- for a project namely “Construction of Commercial Complex at CA No. 7 in HMT Employees Housing Building Co-Operative Society Ltd BDA Approved Layout, Nagasandra Village SY NO. 54, 57, 59 AND 60, Bangalore North Taluk” on a Concession Model through private participation (PPP) on Design, Build, Finance, Operate, Lease and Transfer (the "DBOLT") basis” (hereinafter called “the Bid”).

KNOWN ALL MEN by these presents that We ---------- Bank, ---------- - Branch, having our registered office at ..... (hereinafter called “the Bank”) are bound unto The Commissioner, Bangalore Development Authority (hereinafter called “the Employer”) in the sum of Rs. 29,00,000/- (Rupees Twenty Nine Lakhs Only) for which payment well and truly to be made to the said Employer the Bank binds himself, his successors and assigns by these presents. SEALED with the Common Seal of the said Bank this ----------day of ---------- 2025.

THE CONDITIONS of the obligation are: 1. If the Bidder withdraws his Bid during the period of bid validity specified in the Form of Bid; 2. If the Bidder having been notified of the acceptance of his Bid by the Employer during the period of Bid validity; (i) Fails or refuses to execute the Form of Agreement in accordance with the Instructions to Bidders; or (ii) Fails or refuses to furnish the Performance Security, in accordance with the Instructions to Bidders. We undertake to pay to the Employer up to the above amount upon receipt of his first written demand, without the Employer having to substantiate his demand, provided that in his demand the Employer will note that the amount claimed by his is due to him owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions. This Guarantee will remain in force up to and including the date 225 days after the deadline for submission of bids as such deadline is stated in the Instructions to Bidders

or as it may be extended by the Employer; notice of which extension(s) to the Bank is hereby waived. Any demand in respect of this Guarantee should reach the bank not later than the above date.

Date _____ Signature of the Bank _____ Witness _____ Seal _____

APPENDIX C

Format for Anti-Collusion Certificate

Anti-Collusion Certificate

We hereby certify and confirm that in the preparation and submission of our Proposal for the Project “Construction of Commercial Complex at CA No. 7 in HMT Employees Housing Building Co-Operative Society Ltd BDA Approved Layout, Nagasandra Village SY NO. 54, 57, 59 AND 60, Bangalore North Taluk” on a Concession Model through private participation (PPP) on Design, Build, Finance, Operate, Lease and Transfer (the "DBOLT") basis”, we have not acted in concert or in collusion with any other Bidder or other person(s) and also not done any act, deed or thing which is or could be regarded as anti-competitive.

We further confirm that we have not offered nor will offer any illegal gratification in cash or kind to any person or agency in connection with the instant Proposal.

Dated this .....Day of ....., 2025

.....

(Name of the Bidder)

.....

(Signature of the Authorised Person)

.....

(Name of the Authorised Person)

Note: On the Letterhead of the Bidder

APPENDIX D

Format for Details of Bidder

1. (a) Name

   (b) Country of incorporation

   (c) Address of the registered office, corporate headquarters, and its branch Office (s), if any, in India

   (d) Date of incorporation and/or commencement of business.

2. Brief description of the Bidder including details of its main lines of business and proposed role and responsibilities in this Project.

APPENDIX E

Format for Financial Capability of Bidder

Net Worth (Rs. Lakhs)	Net Cash Accruals (Rs. Lakhs)	
As of 31st March 2024	Year 2023 –24	Year 2024 – 25

Annual Sales Turnover (Rs. Lakhs)	
Year	Amount
2020-21	
2021-22	
2022-23	
2023-24	
2024-25	

The Bidder should provide the Financial Capability based on its own financial statements. Financial Capability of the Bidder's parent company or its subsidiary or any associate company will not be considered for computation of the Financial Capability of the Bidder.

General Instructions:

1. Net Cash Accruals = (Profit After Tax + Depreciation + Non cash Expenses)
2. Net Worth = (Subscribed and Paid-up Capital + Reserves) - (Revaluation reserves + Miscellaneous expenditure not written off)

3. Sales Turnover = Total revenues as indicated in the annual financial statement

4. The financial year would be the same as the one normally followed by the Bidder for its Annual Report.

5. The Bidder shall provide the audited annual financial statements (Last two completed financial years and a provisional financial statement as at 31.03.2025 duly certified by auditor) as well as a Net worth statement (as of 31st March 2025) as required for this RFP. Failure to do so would be considered as a non-responsive bid.

APPENDIX F

Concept Proposal

The Bidder shall submit a Concept Proposal (in pdf format) setting out the approach to the Project as per Clause 2.15 and it's sub-clauses. The design and approach for implementing the Project shall be as per the applicable statutes.

Proposal

The bidder is required to submit the Concept Proposal for the Project Facility i.e. "Construction of Commercial Complex at CA No. 7 in HMT Employees Housing Building Co-Operative Society Ltd BDA Approved Layout, Nagasandra Village SY NO. 54, 57, 59 AND 60, Bangalore North Taluk" on a Concession Model through private participation (PPP) on Design, Build, Finance, Operate, Lease and Transfer (the "DBOLT") basis" only for the purpose of evaluation of the E-cover-1 (First Cover).

The Technical Concept Proposal shall set out the following components:

a. Overall concept plan in the Commercial Facility;
b. Floor Plans;
c. Passages and Fire Safety plans;
d. Entry / exit points and movement pattern for Commercial facility;
e. Handicapped access to all areas;
f. Sections, Elevations
g. Perspective Views

The Bidders shall submit the Concept / Technical Proposal to BDA in compliance with NBC guidelines. The Consultancy Firm or the Technical Committee appointed / formed by BDA shall scrutinize such Concept / Technical Proposals. Financial proposals of Bidders who score more than 65 marks in this Concept / Technical Proposal would be further evaluated and the Bidders scoring less than 65 marks will be disqualified and their financial proposal shall not be opened.

The concept which provides the maximum carpet area to increase rental yielding will be given additional marks during the technical evaluation provided such concept proposal shall be in adherence to the NBC Guidelines.

Bidders would be required to demonstrate the plans in Commercial Facility are in adherence to NBC Guidelines on all key parameters including but not limited to:

a. Width of Passages;

b. Access to Toilets;

c. Access to Services;

d. Access to Stairways and fire exits

The scoring method for qualification would be as per the following table.

Sl. No.	Parameter	Maximum Marks
1	Overall concept plan	30
2	Detailed Floor Plans, sections and Area Statements	20
3	Perspective Views	20
4	Similar experience as a Concessionaire	20
5	Adherence to NBC Guidelines and Building Byelaws	10
	TOTAL MARKS	100

APPENDIX G

Format for Financial Proposal

(On the letterhead of the Bidder)

Description	In Figures (Rs.)	In Words (Rs.) including all taxes
Concession Payment for 30 years		

In case of a discrepancy between the Concession Payment expressed in figures vis-à-vis the

Concession Payment expressed in words, the latter shall govern.

_____

Signature of Authorised Signatory

_____

Name of Authorised Signatory

Date:

Note: Conditional Financial proposals will not be acceptable.

APPENDIX H

Proposed Project Site and Property Schedule (Schedule Property)

Details of the site has been provided as follows:

Indicative area details: 14186.25 Square Meters, C.A. Site No. 07, situated in Sy. Nos. 54, 57, 59 and 60 in HMT Layout, Nagasandra Village, within Jalahalli Planning Zone, Bengaluru ("Project Site").

Measuring

East to West (98.00+97.00)/2 mtr;

North to South (145.0+146.0)/2 mtr;

Bounded by

- East by: Road
- West by: Road
- North by: 60' Road
- South by: Road

APPENDIX I

Scope of Work

1. The Concessionaire will develop the property based assessment of supply demand gap in the vicinity and as per the building bye laws.

2. The Concessionaire may choose to have an integrated development of entire project site or may opt for phase wise development based on the supply-demand gap in the vicinity.

3. The Concessionaire may choose to change the land usage within the ambit of byelaws based on the demand for any particular sector in the vicinity to ensure proper commercial exploitation during the Concession Period.

4. The Concessionaire shall pay the annual concession payment to BDA during the period of the concession. The concession payment quoted by the concessionaire shall increase at the rate of 5% every 5 years.

5. The Concessionaire shall provide for public conveniences in terms of toilets, drinking water fountains and access to the physically handicapped in the proposed Commercial Facility in accordance with the BBMP Bylaws.

6. The Concessionaire will consider ground water recharge and rain water harvesting in the developments.

7. BDA undertakes to provide the approval for change in zonal regulations and change in use of land, enabling the development of the lands for commercial activity or any other activity as provided in this agreement. Subject to the aforesaid, the Concessionaire shall obtain and maintain the validity of all the Applicable licenses and permits in such sequence as is consistent with the requirements of the Project.

8. BDA shall deliver the site free of all encumbrances to the Concessionaire, on the day of executing the Concessionaire Agreement.

9. BDA shall at it's costs, provide the Plan approvals, approvals for revised plans, Commencement Certificate, Occupancy Certificate for the Commercial Facility / Project

Facility constructed in the Schedule Property provided the Concessionaire submits required approvals from various bodies such as Fire services, BESCOM, BWSSB, Airport Authority, Pollution Control Board, environmental Clearances etc. as mandated in the building bye laws. The Commercial operation date shall commence after two years (period for construction and furnishing retail shops and granting licences) from the day after furnishing of Occupancy Certificate along with statutory approvals.

10. BDA shall bear the stamp duty and other costs towards executing the Concessionaire Agreement and Lease Deed.

11. The Concessionaire shall at its cost, expenses and risk make such financing arrangement as would be necessary to implement the Project and to meet all of its obligations in a timely manner. The concessionaire shall have the right to mortgage or create an encumbrance on the whole or any part of the Project Site / Project Commercial Facilities for the purpose of securing any facilities or loans or limits from banks or financial institutions or from Equity Funds. However such loan facility shall be restricted to only the Concession Period granted to the Concessionaire.

12. The ‘Commercial Facility’ or ‘Project Facility’ and the Project Site shall be handed back to BDA at the end of the Concession Period.

Appendix J: Format for Power of Attorney for signing of Bid

Know all men by these presents, We _____ (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr/ Ms (name), _____son/daughter/wife of _____and presently residing at _____, who is presently employed with us/ the Lead Member of our Consortium and holding the position of _____ , as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our "**Bid for** "Construction of Commercial Complex at CA No. 7 in HMT Employees Housing Building Co-Operative Society Ltd BDA Approved Layout, Nagasandra Village SY NO. 54, 57, 59 AND 60, Bangalore North Taluk" on a Concession Model through private participation (PPP) on Design, Build, Finance, Operate, Lease and Transfer (the "DBOLT") basis" invited by the Bangalore Development Authority (the "Authority") including but not limited to signing and submission of all Bids and other documents and writings, participate in Pre-Bid meeting and other meetings/conferences and providing information/ responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our Bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our Bid for the said Project(s) and/ or upon award thereof to us and/or till the entering into of the Concession Agreement with the Authority.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE, _____ THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS _____ DAY OF _____ 2

For ……..

(Signature, name, designation and address) of person authorized by Board Resolution (in case of Firms/Company)/Partner in case of Partnership Firms

Witnesses:

1.

2

Notarised

Notarised Person identified by me/personally appeared before me
/signed before me/Attested/Authenticated*
(*Notary to specify as applicable)

(Signature, Name and Address of the Notary)

Seal of the Notary

Registration Number of the Notary

Date_____

Accepted

(Signature, name, designation and address
of the Attorney)

Notes:

- The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.

- Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.

- For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.

Appendix K: Power of Attorney for Lead Member of Consortium

Whereas the Bangalore Development Authority (the "Authority") has invited Bids from interested parties for the Bid for "Construction of Commercial Complex at CA No. 7 in HMT Employees Housing Building Co-Operative Society Ltd BDA Approved Layout, Nagasandra Village SY NO. 54, 57, 59 AND 60, Bangalore North Taluk" on a Concession Model through private participation (PPP) on Design, Build, Finance, Operate, Lease and Transfer (the "DBOLT") basis".

Whereas, _____, _____ and _____(collectively the "**Consortium**") being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal (RFP) and other connected documents in respect of the Project, and Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium's Bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, _____ having our registered office at _____, (hereinafter collectively referred to as the "**Principals**") and We, _____ having our registered office at _____, (hereinafter collectively referred to as the "**Principals**") do hereby irrevocably designate, nominate, constitute, appoint and authorise M/S _____ having its registered office at _____, being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the "**Attorney**"). We hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the concession/contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are

necessary or required or incidental to the submission of its Bid for the Project, including but not limited to signing and submission of all Bids and other documents and writings, participate in bidding process and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the Bid of the Consortium and generally to represent the Consortium in all its dealings with the Authority, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium's Bid for the Project and/ or upon award thereof till the Concession Agreement is entered into with the Authority.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS _____ DAY OF _____ 2___

For ……..

(Signature, Name & Title)

For ……..

(Signature, Name & Title

For ……..

(Signature, Name & Title

Witnesses:

1.

2.

(Executants)(To be executed by all the Members of the Consortium)

Notes:

- The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.

- Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.

- For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.

Appendix L: Joint Bidding Agreement

(To be executed on Stamp paper of appropriate value)

THIS JOINT BIDDING AGREEMENT is entered into on this the …… day of …… 20…

AMONGST

1. {…… Limited, a company incorporated under the Companies Act, 1956/20131} and having its registered office at …… (hereinafter referred to as the "**First Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2. {…… Limited, a company incorporated under the Companies Act, 1956/2013} and having its registered office at …… (hereinafter referred to as the "**Second Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

3. {…… Limited, a company incorporated under the Companies Act, 1956/2013} and having its registered office at …… (hereinafter referred to as the "**Third Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)

The above mentioned parties of the FIRST, SECOND AND THIRD Part, are collectively referred to as the "**Parties**" and each is individually referred to as a "**Party**"

WHEREAS,

(A) The Bangalore Development Authority (the "Authority"), having its office at T. Chowdaiah Road, Kumara Park West, Bangalore – 560 020, Karnataka, India (hereinafter referred to as

---

[1] A Bidder who is registered abroad may submit the words viz "a company registered under Companies Act, 1956/2013" by the words viz "a company duly organised and validly existing under the jurisdiction of its incorporation".

the "**Authority**" or "BDA" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited Bids (the "**Bids**") by its Request for Bid No. …… dated ……(the "**RFP**") for selection of Bidder for "Construction of Commercial Complex at CA No. 7 in HMT Employees Housing Building Co-Operative Society Ltd BDA Approved Layout, Nagasandra Village SY NO. 54, 57, 59 AND 60, Bangalore North Taluk" on a Concession Model through private participation (PPP) on Design, Build, Finance, Operate, Lease and Transfer (the "DBOLT") basis".

(B) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFP document and other bid documents in respect of the Project, and

(C) It is a necessary condition under the RFP document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Bid.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFP.

2. Consortium

2.1 The Parties do hereby irrevocably constitute a consortium (the "**Consortium**") for the purposes of jointly participating in the Bidding Process for the Project.

2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the "SPV") under the Indian Companies Act 2013 for entering into a Concession Agreement with the Authority and for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

4. **Role of the Parties**

The Parties hereby undertake to perform the roles and responsibilities as described below:

First Party:

Second Party:

Third Party:

(Please Specify Role of the each Party such as Lead Member, financial Member etc. for the Project)

5. **Joint and Several Liability**

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFP and the Concession Agreement, till such time as the Financial Close for the Project is achieved under and in accordance with the Concession Agreement.

6. **Shareholding in the SPV**

6.1 The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:

First Party

Second Party

Third Party

6.2 The Parties undertake that a minimum of 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV shall, at all times till the second anniversary of the date of commercial operation of the Project, be held by the Parties of the First, {Second and Third} Part whose experience and networth have been reckoned for the purposes of qualification and short-listing of Applicants for the Project in terms of the RFP.

6.3 The Parties undertake that each of the Parties specified in Clause 6.2 above shall, at all times between the commercial operation date of the Project and the second anniversary thereof,

hold subscribed and paid up equity share capital of SPV equivalent to at least 5% (five per cent) of the Total Project Cost.

6.4 The Parties undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity share capital of the SPV at all times until the second anniversary of the commercial operation date of the Project.

6.5 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Concession Agreement.

6.6 The Parties undertake that the O&M Member shall subscribe and hold at least 10% (ten per cent) of the subscribed and paid up equity shares in the SPV in terms of the Concession Agreement.}

7. Representation of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

(a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;

(b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:

(i) require any consent or approval not already obtained;

(ii) violate any Applicable Law presently in effect and having applicability to it;

(iii) violate the memorandum and articles of association, by-laws or other applicable organizational documents thereof;

(iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party

is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or

(v) create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;

(c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and

(d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement.

Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Financial Close of the Project is achieved under and in accordance with the Concession Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is either not qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Bidder is not qualified or upon return of the Bid Security by the Authority to the Bidder, as the case may be.

8. Miscellaneous

8.1 This Joint Bidding Agreement shall be governed by laws of {India}.

8.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

IN WITNESS WHEREOF THE, PARTIES HAVE EXECUTED AND DELIVERED THIS CONSULTANCY AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN

SIGNED, SEALED AND DELIVERED

For and on behalf of
LEAD MEMBER BY
By;
(Signature)

(Name)

(Designation)

For and on behalf of
SECOND PART BY
By;
(Signature)

(Name)

(Designation)

For and on behalf of
THIRD PARTY
By;
(Signature)

(Name)

(Designation)

In the presence of:
1
2

Notes:

1. The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the

executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.

2. Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.
3. For a Joint Bidding Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.

FORMAT OF BANK GUARANTEE FOR SECURITY DEPOSIT

To: _____ [name of Employer] _____

[Address of Employer]

WHEREAS _____[name and address of Contractor] (hereinafter called "the Contractor") has undertaken, in pursuance of Contract No._____, dated _____ to execute _____ ["Construction of Commercial Complex at CA No. 7 in HMT Employees Housing Building Co-Operative Society Ltd BDA Approved Layout, Nagasandra Village SY NO. 54, 57, 59 AND 60, Bangalore North Taluk" on a Concession Model through private participation (PPP) on Design, Build, Finance, Operate, Lease and Transfer (the "DBOLT") basis"] (hereinafter called "the Contract"); AND WHEREAS it has been stipulated by you in the said Contract that the Contractor shall furnish you with a Bank Guarantee by a recognized bank for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

AND WHEREAS we have agreed to give the Contractor such a Bank Guarantee; NOW THEREFORE we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of Rs._____ [amount of guarantee] Rupees _____ [in words], and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of _____[amount of guarantee] as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein. We hereby waive the necessity of your demanding the said debt from the Contractor before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Works to be performed there under or of any of the Contract documents which may be made between you and the Contractor shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification. This guarantee shall be valid until 30 days from the date of expiry of the Defects Liability Period.

Signature and seal of the Guarantor

Name of Bank _____

Address _____

Date

O&M REQUIREMENTS

1. General

a. The Concessionaire shall comply with the O&M Requirements of Project Facility as set out in this Schedule.

b. In the planning and implementation of all works and functions associated with the operation and maintenance of the Project Facilities, the Concessionaire shall take all such actions and do all such things (including without limitation, organising itself, adopting measures and standards, executing procedures including inspection procedures, and engaging agencies) in such manner, as will:

   (i) Ensure the safety of personnel deployed on and users of the Facilities or part thereof;

   (ii) Keep the Project Facilities from undue deterioration and wear;

c. During the Concession Period, the Concessionaire shall ensure that:

   (i) Project Facility is kept free from undue deterioration and undue wear;

   (ii) applicable and adequate safety measures are taken;

   (iii) adverse effects on the environment and to the tenants and occupiers of property and/or land in the vicinity of the Project Facilities, due to any of its actions, is minimised;

   (iv) any situation which has arisen or likely to arise on account of any accident or other emergency is responded to as quickly as possible and its adverse effects controlled/minimised;

   (v) disturbance or damage or destruction to property of third party by operations of the Project Facilities is controlled/minimised;

   (vi) a complaint register to record grievances of any member of the public in relation to the operations and maintenance of the Project Facilities is duly maintained;

(vii) all materials used in the maintenance, repair and replacement of any of the assets of the Facilities shall meet the standard requirements.

(viii) the personnel assigned by the Concessionaire have the requisite qualifications and experience and are given the training necessary to enable the Concessionaire meet the O & M Requirements.

2. Maintenance Requirements

A. Routine Maintenance Activities

(a) In order to ensure smooth and uninterrupted use of the Project Facilities routine maintenance of the Project Facilities shall include but not be limited to:

i. repairs to equipment, pavement, building and other civil works, interiors which are part of the Project Facilities;

ii. replacement of equipment/consumables,

iii. maintenance of the Project Facility in accordance with Good Industry Practice;

iv. keeping the Project Facilities in a clean, tidy and orderly condition free of litter and debris;

v. removing and disposing of in accordance with all Applicable Laws and Applicable Permits, all rubbish, debris, etc. including any and all equipment, supplies, materials and wastes brought or produced by the Concessionaire;

vi. taking all practical measures to prevent damage to the Project Facilities;

vii. preventing, with the assistance of concerned law enforcement agencies where necessary, any unauthorised entry to and exit from and any encroachments on the Project Facilities;

viii. taking all reasonable measures for the safety of all the occupants, workmen, material, supplies and equipment installed in the Project Facilities.

(b) The Concessionaire shall regularly carry out the necessary preventive maintenance activities for their Project Facility to ensure adherence to the Construction Requirements throughout the Concession Period.

B. Emergency Maintenance Activities

(a) The Emergency Response Protocol ("ERP") shall be developed by Concessionaire for their Project Facility in consultation with the local police, hospital/ambulance services, fire departments and other authorities/support personnel and the Project Engineer.

(b) The ERP shall set out steps to be taken and measures to be adopted by the Concessionaire in responding to dealing with Emergency including those situations related to vehicle accidents, fire in Project Facilities involving personal injuries or fatalities, property damage and force Majeure.

(c) In case of Emergency, the Concessionaire shall

(i) carry out such emergency maintenance and repairs as may be required to repair the damages, if any, where required under the supervision of the police in order to

ensure that the Project Facilities are returned to normal operating standards as quickly as possible.

(ii) follow the relevant operating procedure including the setting up of temporary traffic cones and lights as well as the removal of obstruction and debris expeditiously.

4. Safety

The Concessionaire shall implement a Safety Management Programme in line with relevant guidelines.

'Draft only'

CONCESSION AGREEMENT

Between

BANGALORE DEVELOPMENT AUTHORITY

T. Chowdaiah Road, Kumara Park West, Bangalore – 560 020

AND

'Concessionaire'

For

"Construction of Commercial Complex at CA No. 7 in HMT Employees Housing Building Co-Operative Society Ltd BDA Approved Layout, Nagasandra Village SY NO. 54, 57, 59 AND 60, Bangalore North Taluk" on a Concession Model through private participation (PPP) on Design, Build, Finance, Operate, Lease and Transfer (the "DBOLT") basis"

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THIS CONCESSION AGREEMENT MUTUALLY AGREED AND ENTERED INTO ON THIS THE ..... DAY OF ....., TWO THOUSAND AND ..... AT BANGALORE,

BETWEEN

BANGALORE DEVELOPMENT AUTHORITY, a statutory body established under provisions of Bangalore Development Authority Act, 1976, through and having principal office at T. Chowdiah Road, Kumara Park west, Bangalore – 560020 (herein after referred to as **"BDA"** or **"the Concessioning Authority**" or "**the First Party**" which expression shall unless repugnant to the context include its administrators, successors and assigns), of the ONE PART;

AND

1. **M/s. ……..**, hereinafter referred to as the "**Lead Member";**

2. **M/s. ……..**, hereinafter referred to as the **"Associate Member";**

The Lead Member and Associate Member/s are jointly referred to as the "Concessionaire" or "**the Second Party**" **which expression shall unless repugnant to the context include** the respective parties, their legal representatives, assignees and

successors-in-interest, its administrators, successors and permitted assigns, on the OTHER PART.

The First Party and the Second Party shall, wherever the context may warrant, be hereinafter collectively referred to as the "Parties" and BDA and the Concessionaire shall, wherever the context may warrant, be hereinafter individually referred to as the "Party".

WHEREAS,

A. BDA has been entrusted with statutory powers under provisions of Bangalore Development Authority Act, 1976, and Karnataka Town and country planning Act.1961, for drawing up development plan and town planning Schemes within the Bangalore Metropolitan Area (as recognised by BDA), pursuant to such powers BDA as part of it's effort to improve the standards of life, and it's quest to transform Bangalore City with an ideal destination with a high quality infrastructure, has decided to develop the 'Project Site' (defined hereinafter).

B. BDA has represented to the Consortium and the Concessionaire that BDA is the sole and absolute owner with full right, title and interest in all that piece and parcel of immovable property bearing C.A. Site No. 07, situated in Sy. Nos. 54, 57, 59 and 60 in HMT Layout, Nagasandra Village, within Jalahalli Planning Zone, Bengaluru, measuring 14186.25 Square Meters Sq. Mtrs., (hereinafter collectively referred to as **"Project Site"**).

C. BDA, has invited proposals to redevelop the Project Site, involving private sector participation, by allowing the development thereof by the Consortium through the Concessionaire, on a long - term Design, Build, Finance, Operate, Lease and Transfer (the "DBOLT") Concession framework basis for a Thirty (30) year Concession term and the Concession term is further extendable by mutual agreement between the parties for 30 (Thirty) years.

D. Pursuant to a successful bidding process, the Consortium having offered the highest concession payment in its Financial Proposal, BDA accepted the bid offer of the Consortium and has awarded this Concession to the Consortium vide its Letter of Acceptance dated ..... and the Consortium has acknowledged the same vide its letter dated .....;

E. The Consortium has duly incorporated a special purpose company for taking up the role of Concessionaire for financing, designing, construction, development, maintenance, operation and transfer of the Project facility in accordance with the terms and conditions stipulated herein.

F. The Parties hereto are desirous of entering into this Concession Agreement to record the terms, conditions and covenants for grant of the Concession.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:-

ARTICLE 1

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively ascribed to them hereunder:

1.1.1 **"Affected Party"** shall mean the Party claiming to be affected by an Event as specified in Article 7.1.

1.1.2 **"Agreement"** means this Agreement together with all schedules, annexures and plans attached hereto, and includes any amendments hereto made in accordance with the provisions hereof.

1.1.3 **"Applicable Law"** means all laws in force and effect as on the date hereof and which may be promulgated or brought into force and effect hereinafter in India including judgments, decrees, including Byelaws, rules, notifications, injunctions, writs or orders of any court as may be in force and effect during the subsistence and continuance of this Agreement and applicable to the Project / the Concessionaire in relation to the Project and includes any amendments or modifications thereto.

1.1.4 **"Applicable Permits"** means all clearances, permits, licenses, authorizations, consents, sanctions and approvals required to be obtained or maintained by

the Concessionaire under Applicable Law, in connection with the execution, renovation, operation and maintenance of the Project during the subsistence of this Agreement.

1.1.5 **"Arbitration Act"** means the Arbitration and Conciliation Act, 1996 and shall include any amendment to or any re-enactment thereof from time to time.

1.1.6 **"BBMP"** means the Bruhat Bengaluru Mahanagara Palike

1.1.7 **"BDA"** means the **Bangalore Development Authority**, the First Party herein.

1.1.8 **"Book Value"** shall mean the value of the capital expenditure incurred on the Project as per the books of the Concessionaire, net of depreciation charged at the rate of 1.63% (one point six three percent) per annum on the basis of straight line method and amortised equally over the Operations Period, duly verified and certified by an Independent Chartered Engineer who shall be a member of the Institute of Engineers, India and appointed jointly by both the parties.

1.1.9 **'Commercial Facility"** shall mean the commercial space and car parking space developed on the Project Site and any other asset comprised therein by the Concessionaire for commercial use by the Concessionaire including retail spaces, show rooms, offices, call centres and BPO's / KPO's, hotels, Service apartments, hostel rooms, restaurants, food courts, alcoholic liquor, and pub/bars, entertainment complexes (multiplex, cinema hall, auditorium), social Clubs, healthcare institutions (hospitals, research institutions, health tourism, and other health facilities) museum, games complex with video games, bowling alley, snooker/ billiards etc.), shopping mall, amusement park, convention centres, commercial parks, industrial

parks, SEZ, and / or office space, business centres, coaching centers, play homes, schools, educational institutions etc. and such other activities that are legally permissible.

1.1.10 **"Commencement Date"** means the day after obtaining the plan approvals and Commencement Certificate from concerned authority or the day after expiry of three hundred and sixty five days (365) days from the date of delivery of the Concession agreement whichever is later.

1.1.11 **"Commercial Operation Date"** means the date on which the Concessionaire obtains the Occupancy Certificate in respect of the Project Facility or Thirty Six (36) months from the Project Facility Commencement Date, whichever is earlier.

1.1.12 **"Concession"** shall have the meaning ascribed thereto in Article 2.1 of this Agreement.

1.1.13 **"Concession Fee / Concession Payment"** means the amounts payable by the Concessionaire to BDA in accordance with Article 5.

1.1.14 **"Concession Period"** shall have the meaning ascribed thereto in Article 2.2 of this Agreement.

1.1.15 **"Construction Requirements"** shall mean the requirements for construction of built-to- suit retail shops and offices, set out in Schedule 4.

1.1.16 **"Construction Works"** shall mean all works and things required to be undertaken by the Concessionaire for operations and maintenance of the Commercial Facility, in accordance with the agreement.

1.1.17 **"Contractor"** shall mean any person with whom the Concessionaire has entered into / may enter into any of the Agreements.

1.1.18 **"Drawings"** shall mean all of the drawings, as built drawings and documents pertaining to the Project assets in accordance with the Requirements.

1.1.19 **"Due Date"** means the date(s) on which the Concessionaire has to make payment to BDA in accordance with Article 5.

1.1.20 **"Emergency"** shall mean a condition or situation that is likely to endanger the safety of the individuals on or about the Project Facilities including the safety of the users thereof or which poses an immediate threat of material damage to the Project Facilities.

1.1.21 **"Encumbrance"** means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, physical encumbrances, claims for any amounts due on account of taxes, cesses, electricity, water and other utility charges and encroachments on the Commercial Facilities.

1.1.22 **"Expiry"** means expiry of this Concession by efflux of time at the end of Thirty (30) years from the Commercial Operations Date.

1.1.23 **"Expiry Date"** means the date on which Expiry occurs.

1.1.24 **"Financing Documents"** means the documents executed by the Concessionaire, in respect of financial assistance provided or to be provided by the Lenders by way of loans, guarantees, subscription to non-convertible debentures, debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements and other documents including re-financing and amendments made in accordance with the provisions of this Agreement.

1.1.25 **"Financial Year"** means the period commencing from April 1 of any given year to March 31 of the succeeding year.

1.1.26 **"Force Majeure"** or **"Force Majeure Event"** means an act, event, condition or occurrence as specified in Article 7.

1.1.27 **"Good Industry Practice"** means the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision of a project similar to that of the Project.

1.1.28 **"Government Agency"** shall mean Government of India, Government of Karnataka or governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state, or local, having jurisdiction over the Concessionaire, the Project Site, the Project Facilities or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement.

1.1.29 **"Lenders"** means financial institutions, banks, NBFCs, funds and trustees for bond holders or debenture holders, individuals or group of individuals who may provide financial assistance to the Concessionaire for financing the Project or any part thereof.

1.1.30 **"Material Adverse Effect"** means a material adverse effect on (a) the ability of the Concessionaire to either exercise any of its rights or perform/discharge any of its duties/obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement.

1.1.31 **"Material Breach"** means a breach by either Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect and which such Party shall have failed to cure.

1.1.32 **"O&M Requirements"** shall mean the requirements as to operation and maintenance as set forth in Schedule 5 pertaining to the Project Facilities.

1.1.33 "**Parking Facility**" means the four – wheeler and/or two – wheeler parking spaces constructed by the Concessionaire in the Commercial Facility.

1.1.34 "**Parking Fees**" shall mean the fee payable by the users of the Parking Facility.

1.1.35 "**Performance Security/Guarantee**" shall mean the bank guarantee delivered to BDA by the Concessionaire for the due performance of its obligations under this Agreement, in accordance with Article 5.

1.1.36 **"Person"** shall mean (unless otherwise specified or required by the context), any individual, company, body corporate, corporation, partnership, joint venture, trust, unincorporated organization, government or Government Agency or any other legal entity.

1.1.37 **"Preliminary Notice"** means the notice of intended Termination by the Party entitled to terminate this Agreement to the other Party setting out, inter alia, the underlying Event of Default.

1.1.38 "**Project**" means "Construction of Commercial Complex at CA No. 7 in HMT Employees Housing Building Co-Operative Society Ltd BDA Approved Layout, Nagasandra Village SY NO. 54, 57, 59 AND 60, Bangalore North Taluk" on a Concession Model through private participation (PPP) on Design, Build, Finance, Operate, Lease and Transfer (the "DBOLT") basis i.e. "the Commercial Facility or Project Facility which may include commercial development including retail space, commercial parks, I.T. Parks, industrial parks, STP parks, multiplex, social club, convention centre, coaching centre, training centres, play homes, shools, educational institutions, pubs and restaurants, fitness centre, spa etc. along with the Parking Facilities in the Project Site as per the provisions of this Agreement.

1.1.39 **"Project Agreements"** means collectively this Agreement, contracts for engineering, procurement, construction, operation, maintenance, development agreements, lease agreements, sub-lease agreements, any other agreements or contracts (other than Financing Documents) entered into or which may hereafter be entered into by the Concessionaire in connection with the Project.

1.1.40 **"Project Completion Certificate"** shall mean the certificate issued by the BDA or an Engineer appointed by BDA, certifying, inter-alia, that the Concessionaire has completed construction of the Project Facilities in accordance with the Construction Requirements.

1.1.41 **"Project Manager"** means a Person appointed by the Concessionaire for the supervision of the Construction Requirements and O&M Requirements, more particularly to undertake, perform, and carry out the duties, responsibilities, services and activities set forth in Schedules 4 and 5.

1.1.42 **"Project Engineer or Project Management Consultant"** means a Person appointed by BDA for supervision and monitoring of compliance by the Concessionaire with the Construction and O&M Requirements, more particularly to undertake, perform, and carry out the duties, responsibilities, services and activities set forth in Schedule 6.

1.1.43 **"Project Facilities"** means the Project facility shall include all facilities, services and all appurtenances which the Concessionaire may build, provide, refurbish, modify, demolish, alter or procure within the Project Site for the better utilisation of the Project Facilities, consistent with Good Industry Practice and the terms of this Agreement.

1.1.44 **"Project Site"** means C.A. Site No. 07, situated in Sy. Nos. 54, 57, 59 and 60 in HMT Layout, Nagasandra Village, Bengaluru, for purposes of construction and development of Project facility and on its completion within the stipulated time handing over the same to BDA by Concessionaire;

1.1.45 **"Senior Lenders Representative"** means the person duly authorised by Senior Lenders to deal with the Parties to the agreement with regard to issues arising out and contained in this agreement.

1.1.46 **"Substitution Agreement"** means the agreement to be entered into among the Concessionaire, BDA and the Lenders providing inter-alia, for substitution of Concessionaire by any person or entity in accordance with the provisions of this agreement and substitution agreement.

1.1.47 **"Termination"** means early termination of this Agreement pursuant to Termination Notice in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include Expiry.

1.1.48 **"Termination Date"** means the date specified in the Termination Notice as the date on which Termination shall occur.

1.1.49 **"Termination Notice"** means the notice of Termination by either Party to the other Party, in accordance with the applicable provisions of this Agreement.

1.1.50 **"Tests"** shall mean the tests to be carried out in accordance with the Construction Requirements and if not expressly specified in the said requirements, as instructed by the Project Management Consultant, in accordance with this Agreement and "Testing" and "Tested" shall be construed accordingly.

1.2 Interpretation

In this Agreement, unless the context otherwise requires,

1.2.1 any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies to, or is capable of being applied to any transactions entered into hereunder;

1.2.2 the headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;

1.2.3 the words "include" and "including" are to be construed without limitation;

1.2.4 any reference to day, month or year shall mean a reference to a calendar day, calendar month or calendar year respectively;

1.2.5 any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;

1.2.6 references to recitals, articles, sub-articles, clauses, or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, articles, sub-articles, clauses and schedules of or to this agreement;

1.2.7 any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or Project Engineer shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such Party in this behalf and not otherwise;

1.2.8 The damages payable by either Party to the other of them as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty.

ARTICLE 2

2 CONCESSION & CONCESSION FEE

2.1 Scope of the Project

2.1.1 The scope of the Project (the "Scope of the Project") shall mean and include, during the Concession Period:

(a) "Construction of Commercial Complex at CA No. 7 in HMT Employees Housing Building Co-Operative Society Ltd BDA Approved Layout, Nagasandra Village SY NO. 54, 57, 59 AND 60, Bangalore North Taluk" on a Concession Model through private participation (PPP) on Design, Build, Finance, Operate, Lease and Transfer (the "DBOLT") basis for a Concession period of 30 (Thirty) years and is further extendable by mutual agreement between the parties for 10 (ten) years as prescribed in the Concession Agreement.

(b) operation and maintenance of-the Project facility in accordance with the provisions of this Agreement; and

(c) Performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

2.2 Grant of Concession

2.2.1 Subject to and in accordance with the provisions of this Agreement, BDA hereby exclusively grants to the Concessionaire the concession set forth herein including the exclusive right, license and authority to "Construction of Commercial Complex at CA No. 7 in HMT Employees Housing Building Co-Operative Society Ltd BDA Approved Layout, Nagasandra Village SY NO. 54, 57, 59 AND 60, Bangalore North Taluk" on a Concession Model through private participation (PPP) on Design, Build, Finance, Operate, Lease and Transfer (the "DBOLT") basis and enjoy the lease hold rights, powers, benefits, privileges, authorisations, other rights and other entitlements as set forth in this Agreement including the right to collect, retain and appropriate all income, benefits, privileges, usufructs, tariffs, Parking Fees, rentals, other fees and charges in respect of the Commercial Facility, operate and maintain the Project (the "Concession") during the concession period of 30 (Thirty) years exclusive of design, construction, marketing period of 3 (three) years and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein to and to hand over to BDA, the Project Facilities on its completion of Concession Term as stipulated in this agreement on the Expiry Date or the Termination Date, as the case may be.

2.2.2 Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:

(a) access, lease and handover the Commercial Facility for the purpose of and to the extent conferred by the provisions of this Agreement;

(b) Design, Build, Finance, Operate, Lease and Transfer (the "DBOLT") the Commercial Facility;

(c) manage, operate and maintain the Commercial Facility and regulate the use thereof by third parties;

(d) demand, collect and appropriate fee from Users liable for payment of Fee for using the Commercial Facility or any part thereof;

(e) perform and fulfill all of the Concessionaire's obligations under and in accordance with this Agreement;

save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement;

2.2.3 BDA has, agreed to execute a lease deed (the "**Lease Deed**") in respect of the land along with right, title and interest of the Project Site in favour of the Concessionaire for the period of the Concession at it's costs.

2.2.4 The Concessionaire shall also pay to the BDA (Authority) annual lease rent (the "Annual Lease Rent") of Rs.100 (Rupees Hundred) per annum inclusive of taxes in lieu of land awarded on Concession to the Concessionaire. The first Lease Rental payment shall be paid with the execution of the Lease Deed in accordance with the Concession Agreement. The above mentioned Annual Lease Rent shall be for the first year of lease/concession. Thereafter the Annual Lease Rental shall be escalated at the rate of 5% (five percent) every five years throughout the lease

period/concession period. The Selected Bidder shall make payment of Annual Lease Rent through Escrow Account in accordance with the Draft Concession Agreement. The Concessionaire shall be permitted to mortgage the lease hold rights of the land and Commercial Facility.

2.3 Concession Period

2.3.1 The Concession hereby granted for "Construction of Commercial Complex at CA No. 7 in HMT Employees Housing Building Co-Operative Society Ltd BDA Approved Layout, Nagasandra Village SY NO. 54, 57, 59 AND 60, Bangalore North Taluk" on a Concession Model through private participation (PPP) on Design, Build, Finance, Operate, Lease and Transfer (the "DBOLT") basis ('Concession') is for a period of 30 (Thirty) years, commencing from the Commercial Operations Date and ending on the Expiry Date, and is further extendable by mutual agreement between the parties for 30 (Thirty) years with respect to Commercial Facility alone.

2.3.2 Provided however, that in the event, the Concessionaire is unable to commence and / or continue marketing, leasing, operation and maintenance and / or its possession or enjoyment thereof is adversely affected by any reason as set out in Clause 3.3(e) below, the Concession Period shall stand proportionately extended.

2.4 Commercial Operations Date

2.4.1 The Commercial Operation Date (the "COD") of the Project Facility shall commence on completion of Thirty Six (36) months from the Commencement Date.

2.5 Acceptance of Concession

2.5.1 In consideration of the rights, privileges and benefits, etc., as provided herein conferred upon the Concessionaire by the First Party and other good and valuable consideration expressed herein, the Concessionaire hereby accepts the Concession and agrees and undertakes to perform / discharge all of its obligations in accordance with the provisions hereof.

2.6 Concession Fee

2.6.1 In consideration of the Concession hereby granted, in respect of commercial facility, the Concessionaire shall pay to BDA under the Concession Agreement, Concession Payment, as set out in Schedule 2. Escalations if any occurring during the construction and maintenance activities will have no bearing what so ever on the concession amount/payment as set out in Schedule 2. The first Concession Payment pro-rated to the number of days and months in the relevant year shall become due to BDA with effect from the Commercial Operations Date. No payment shall be payable till then to BDA. All subsequent Concession Payments shall be made annually every year during the Concession Period. Any delay in making any Concession Payment shall, without prejudice to any other consequences under this Agreement, entail payment of interest on the amount due at the rate of 2% above the Prime Lending Rate of the State Bank of India, per annum from the relevant Due Date till the date of payment/ realization and/or termination of lease at the sole discretion of BDA on failure of making concession payment consecutively for three years.

2.6.2 The Concession Payment shall be made by way of cheque in favour of the Commissioner, BDA, payable at Bangalore.

2.6.3 The Concession Payment for the year shall be paid on or before 10th day of the first month of the subsequent calendar year.

2.6.4 The Concessionaire shall be entitled to deduct the income tax and GST deductible at source, from the concession payment and pay the net amount to BDA. The Concessionaire shall furnish to BDA the Tax Deduction at Source (TDS) certificates every year if required.

2.6.5 The concession payment payable by the concessionaire to BDA in accordance with Article 5 of this concession agreement shall be inclusive of all indirect taxes applicable, if any, such as goods and service tax, duties, cesses, rates, levies and such other statutory payments payable under all or any of statutes now or hereafter imposed, increased or decreased from time to time, which shall be the exclusive liability of the concessionaire for such payment. However tax deduction at source and such other withholdings to be deducted at source as applicable under law would be made by the Concessionaire. Direct taxes applicable on concession payments such as income tax would be the responsibility of BDA.

2.6.6 Subject to the provisions of this Agreement and in consideration of the lease of land granted to the Concessionaire under the Lease Deed and undertaking to perform and discharge its obligations in accordance with the terms, conditions and covenants set forth in this Agreement, the Concessionaire agrees to pay to the Authority Rs.100/- per annum as Annual Lease Rental with 5% escalation every year.

2.6.7 Property tax and such other taxes, duties payable to local / municipal authorities as applicable would be payable by the BDA as applicable.

3 PROJECT SITE & PROJECT FACILITY

3.1 Details of Project Site

C.A. Site No. 07, situated in Sy. Nos. 54, 57, 59 and 60 in HMT Layout, Nagasandra Village, within Jalahalli Planning Zone, Bengaluru measuring about 14186.25 Square Meters.

3.2 Handover of Project Site

3.2.1 BDA has on this day handed over to the Concessionaire on an as-is where-is basis (i.e., with the existing trees), peaceful physical vacant possession of the Project Site for construction and development of Project facility.

3.2.2 The Concessionaire shall have the right to enter upon, occupy and use the Project Site and to make, at its cost and expenses, such investigation, development and improvements in the Project Site as may be necessary or appropriate to implement the Project in accordance with the provisions of this Agreement.

3.3 Rights over the Project Site

3.3.1 The Concessionaire shall be entitled to develop the Project Site in accordance with the provisions of this Agreement and for this purpose it may regulate access to and use thereof by any Person. The Officers of BDA shall have right

to enter upon the project site and make such inspection at any point of time as and when required at its own discretion adhering to safety procedures adopted at site by the Concessionaire.

3.3.2 The Concessionaire shall be entitled to cut and remove all or any of the trees currently standing on the Project Site and remove any temporary structures and clear all debris and material generated during the course of such demolition and removal of any foundation material and trees.

3.3.3 The Concessionaire shall be entitled to lease, license, sub-lease, joint development, assign and / or in any other manner transfer its concession rights over the Project Site including the right to sub - concession to such Person(s) as it may deem fit, and to collect from such Persons rent, license fees, user fees, maintenance charges, salvage charges and other amounts during the Concession Period.

3.3.4 In case of any change in Applicable Law resulting in an increase of built – up area possible to be constructed at any time during the Concession Period, the Concessionaire may, at its cost and expense, construct the same. The Concessionaire shall possess all rights under this Agreement on such additional built - up area including the right to lease/ license and collect appropriate charges / user fees for the facilities and services provided during the Concession Period. No additional costs shall be paid to BDA on account of Concession Fee.

3.4 Rights over the Project Facility / Commercial Facility

3.4.1 Concessionaire shall be entitled to build a variety of facilities in the Project Site (“Project Facility or Commercial Facility”) i.e. shops, show rooms, shopping mall, amusement park, banks, corporate offices, exhibition halls, Coffee shops, food courts, convention centre, alcoholic liquor, and pub/bars,

entertainment centres, (multiplex, cinema hall, auditorium), restaurants, food courts, fitness centre, spa, offices, call centres and BPO's / KPO's, training centres, coaching centres, schools, educational institutions, Mini Halls, healthcare institutions (hospitals, research institutions, health tourism, and other health facilities) museum, games complex with video games, bowling alley, snooker/ billiards etc.), commercial parks, SEZ, and / or office space, business centres, Coaching centre, Hospitality facilities, service apartments, hostel rooms, social club, etc. and such other activities that are legally permissible and lease/sub-lease the same during the Concession Term.

3.4.2 Concessionaire shall be entitled to exercise and/ or promote/market to lease source the retailers, Sub-lease the retail outlets, finance, operate, maintain, manage, enjoy the lease hold rights, powers, benefits, privileges, authorisations, other rights and other entitlements as set forth in this Agreement including the right to collect, retain and appropriate all income, benefits, privileges, usufructs, tariffs, Parking Fees, rentals, other fees and charges in respect of the Commercial Facility and transfer the commercial facility in accordance with the provisions of this Agreement to BDA, the Commercial Facility on its completion as stipulated in this agreement on the Expiry Date or the Termination Date, as the case may be.

3.4.3 The Concessionaire shall be entitled to lease, license, sub-lease, assign and / or in any other manner transfer its rights over the Project Facility / Commercial Facility including the right to sub - concession to such entities / person(s) as it may deem fit, and to collect from such entities / persons rent, license fees, user fees, maintenance charges, salvage charges and other amounts during the Concession Period.

3.4.4 The Concessionaire shall collect and appropriate Parking Fees from the users of the Parking Facility during concession period.

3.4.5 The Concessionaire may secure loans or credit limits from Banks and Financial institutions against the income from the Project Facilities like rent, user's fee etc. and may discount the rental income from the Project Facilities,

provided that such loans or limits are cleared off fully before the Expiry Date or Termination Date. The Concessionaire shall indemnify BDA against any such liabilities.

3.4.6 The Concessionaire shall be entitled to mortgage the whole or any part of the Project Site and Project facility for the purpose of securing any loan or financial assistance from banks or financial institutions. Provided however, that the Concessionaire shall be entitled to create such charges / mortgages in respect of the Concessionaire's leasehold interest in the Project Site and development rights and interest in the Commercial Facility, as may be required by the banks and / or financial institutions, and BDA shall extend full co-operation to the Concessionaire in this regard. BDA shall not be liable for any financial commitment that may be received by the Concessionaire from any Banks or Financial Institutions and no such liability be fastened on BDA by the Concessionaire whatsoever with respect to the Project Facility / Commercial Facility. However the authority to mortgage shall be restricted to the last date of Concession Period.

3.4.7 The Concessionaire shall be permitted to commercially exploit the Project site and Project facilities and services and adapt the same to suit the changing market trends or business needs/ expectancies from time to time so long as such exploitation is not opposed or detrimental to the public good and is also in conformity with applicable laws.

3.4.8 The Concessionaire shall be entitled to exercise discretion in all matters relating to the conceptualization, manner, method and design of construction of the Project subject to the terms of this Agreement.

3.5 Representations of BDA

BDA hereby represents that:

3.5.1 BDA is the sole and absolute owner with full right, title and interest therein and in possession of the Project Site and BDA has full powers to hold and deal with the same consistent, inter alia, with the provisions of this Agreement.

3.5.2 The Concessionaire shall, in respect of the Project Site, have no liability whatsoever regarding payment of any compensation towards rehabilitation / resettlement from any Persons affected in any manner pursuant to the execution of this Agreement and performance of the terms hereof by the Parties.

3.5.3 It shall be the duty of BDA to take all steps to protect its title during the Concession Period or any extension thereof.

3.5.4 There are no actions, suits or proceedings pending or to it's knowledge threatened against it at law or in equity before any court, any tribunal, any judicial or quasi judicial authorities, statutory authorities or any other authorities, the outcome of which may result in the default or breach of this agreement or which individually or in aggregate may result in any materially of it's liabilities to perform it's obligations under this agreement.

3.5.5 This Agreement has been executed by BDA after duly fulfilling all legal formalities and adhering to the provisions of its constitution / incorporation documents including rules, regulations and / or byelaws framed there under and that this Agreement constitutes a legal, valid and binding obligation on BDA.

3.5.6 Upon Concessionaire paying Concession fee as agreed and performing the covenants in this agreement, BDA shall not at any time during the Term thereof interfere with peaceful exercise of the rights and discharge of the obligations by the Concessionaire in accordance with this Agreement.

3.5.7 The Concessionaire, including any Persons claiming through or under the Concessionaire, shall, subject to complying with the terms and conditions of this Agreement, be entitled to remain in peaceful possession and enjoyment of the Project Site during the Concession Period. In the event the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Project Site or the Project Facilities or any part thereof, or in the event of any action being initiated by any Person claiming to have any interest in/charge or the Project Site and / or any part thereof including any order of injunction, stay, restraint, attachment, distrait, appointment of receiver or liquidator ("Order") being passed in respect of the Project Site or any part thereof or the development commenced thereon pursuant to this Agreement by the Concessionaire, BDA shall diligently defend such claims and proceedings and also keep the Concessionaire indemnified against any consequential loss or damages which the Concessionaire may suffer, on account thereof, as mutually assessed. BDA shall also be obliged to take such remedial action to vacate any such Order to enable the Concessionaire to peacefully commence, re-commence, continue and/or conclude the Project in terms hereof.

3.5.8 BDA reserves it's right to appoint an Project Engineer at it's costs.

3.5.9 There are no actions, suits or proceedings pending or to it's knowledge threatened against it at law or in equity before any court, any tribunal, any judicial or quasi judicial authorities, statutory authorities or any other authorities, the outcome of which may result in the default or breach of this agreement or which individually or in aggregate may result in any materially of it's liabilities to perform it's obligations under this agreement.

3.5.10 It shall be the duty of BDA to take all steps to protect its title during the Concession Period or any extension thereof.

3.5.11 This Agreement has been executed by BDA after duly fulfilling all legal formalities and adhering to the provisions of its constitution / incorporation documents including rules, regulations and / or byelaws framed there under and that this Agreement constitutes a legal, valid and binding obligation on BDA.

3.5.12 The Concessionaire shall, in respect of the Project Facility, have no liability whatsoever regarding payment of any compensation towards rehabilitation / resettlement from any Persons affected in any manner pursuant to the execution of this Agreement and performance of the terms hereof by the Parties.

3.5.13 Upon Concessionaire paying Concession fee as agreed and performing the covenants in this agreement, BDA shall not at any time during the Term thereof interfere with peaceful exercise of the rights and discharge of the obligations by the Concessionaire in accordance with this Agreement.

3.5.14 The Concessionaire, including any Persons claiming through or under the Concessionaire, shall, subject to complying with the terms and conditions of this Agreement, be entitled to remain in peaceful possession and enjoyment of the Project Site and Project Facility during the Concession Period. In the event the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Project Site or the Project Facilities or any part thereof, or in the event of any action being initiated by any Person claiming to have any interest in/charge or the Project Facility and / or any part thereof including any order of injunction, stay, restraint, attachment, distrait, appointment of receiver or liquidator ("Order") being passed in respect of the Project Site or any part thereof or the development commenced thereon pursuant to this Agreement by the Concessionaire, BDA shall diligently defend such claims and proceedings and also keep the Concessionaire indemnified against any consequential loss or damages which the Concessionaire may suffer, on account thereof, as mutually assessed. BDA

shall also be obliged to take such remedial action to vacate any such Order to enable the Concessionaire to peacefully commence, re-commence, continue and/or conclude the Project in terms hereof.

3.5.15 BDA reserves it's right to appoint Project Engineer at it's costs.

3.6 Applicable Permits

3.6.1 The Concessionaire shall obtain, at his own cost, all Applicable Permits, including approvals for change of land use, if any, required for the development envisaged hereunder.

3.6.2 BDA shall fully co-operate, and shall sign and execute all necessary document/s and papers as may be required to enable the Concessionaire to secure Applicable Permits.

ARTICLE 4

4 PROJECT MANAGER, SITE STAFF, PROJECT MANAGEMENT CONSULTANT, ETC.

4.1 Project Manager, Site Staff, etc.

(a) The Concessionaire is required to appoint at its cost a qualified Project Manager for the duration of the Project. The Concessionaire shall ensure that the Project Manager shall possess the following minimum qualifications:

(i) should be a graduate in civil engineering

(ii) should have executed multi-storied building projects of value not less than Rupees Five Crores

(iii) should be conversant with management techniques including CPM / PERT analysis.

(b) The Concessionaire shall ensure that adequate site staff, both technical and administrative, are appointed by the Concessionaire for proper and efficient supervision and completion of the project.

4.2 Project Management Consultant

BDA may appoint a Project Engineer or Project Management Consultant who will co-ordinate and monitor various activities involved in the Project. The Project Engineer shall be responsible to issue Project Completion Certificate to the Concessionaire. The role and scope of services of the Project Management Consultant shall be as specified at Schedule- 6 to this Agreement.

4.3 BDA may engage a qualified engineer at it's cost to supervise the activities of the project and quality of construction and report to the parties.

5 CONCESSIONAIRE'S OBLIGATIONS

In addition to and not in derogation or substitution of any of its other obligations under this Agreement, the Concessionaire shall have the following obligations:

5.1 USE OF PROJECT SITE:

The Concessionaire shall use the Project Site for the purpose set out in this Concession Agreement only.

5.2 CONCESSION PAYMENT:

The Concessionaire shall regularly pay the Concession Payment as set out in Schedule-2 herein and shall observe and fulfil each of its obligations and covenants set forth herein.

5.3 PERFORMANCE SECURITY:

5.3.1 The Concessionaire shall provide to BDA not later than sixty days (60 days) from the date of signing this agreement an irrevocable bank guarantee for a sum of 5% of Awarded Price ("**Security Deposit**") with the First Party.

5.3.2 The Performance guarantee shall be returned to the Concessionaire on the date of the Concessionaire handing over the Project facility to BDA.

5.3.3 In the event this Agreement is terminated for any reason whatsoever, the First Party shall, within a period of twenty one days from the date of termination, refund the Performance Security to the Concessionaire.

5.4 Specific Obligations

5.4.1 The Concessionaire shall design, develop the Project facility and finance the project at its own cost and in accordance with the Technical Proposal as set out in Schedule-8 and Schedule-9.

5.4.2 The concessionaire shall Design, Develop, Finance, Lease, Operate and Transfer the Project Facility at its own cost and expense in accordance with the terms of Concession agreement.

5.4.3 In the event of shifting of existing utilities and any temporary structures and any debris etc. that exists in the Project Site, the expenses for the same will be borne by the BDA.

5.4.4 The Concessionaire shall pay the concession payment to BDA in equated annual instalments during the period of the concession. The Concessionaire shall increase the concession payment at the rate of 5% once every 5 years.

5.4.5 Concessionaire shall be exempted from making concession payments during extra ordinary circumstances such as occurrence of pandemic of any kind that may stall the businesses, war, unforeseen situations, and force majeure events. The concession terms also deemed to be exempted for such extra ordinary circumstances.

5.5 Financing Arrangement

The Concessionaire shall at its cost, expenses and risk make such financing arrangement as would be necessary to implement the Project and to meet all of its obligations under this Agreement, in a timely manner without causing any liability or burden to BDA.

5.6 Right to create mortgage in the Project Site

The Concessionaire shall have right to create mortgage rights in relation to Project Facility including the Project Site in favour of Financial Institutions, Senior Lenders or

trustees so appointed and acting on behalf of the senior lenders for procuring financial assistance for fulfilling it's obligations under this agreement. The right to create mortgage shall be limited to the extent of Concession Period.

5.7 Project Completion

The Concessionaire shall complete construction of the Project or Commercial Facility, in accordance with the bye laws, within a period of Thirty Six (36) months from the date of issue of Commencement date.

5.8 Project Implementation: Construction Works

5.8.1 The Concessionaire shall adhere to the Construction Requirements and intimate BDA and the Project Management Consultant about the completion of construction to enable the Project Management Consultant to issue Project Completion Certificate.

5.8.2 The Concessionaire may undertake Construction Works by itself or through a Contractor possessing requisite technical, financial and managerial expertise/capability; but in either case, the Concessionaire shall remain solely responsible to meet the Construction Requirements and O&M Requirements.

5.8.3 The Concessionaire shall, before commencement of Construction Works, have the requisite organizational set up and designate and appoint suitable officers/ representatives as it may deem appropriate to supervise the Project, to liaise with BDA and to be responsible for all necessary exchange of information required pursuant to this Agreement.

5.8.4 For the purposes of determining whether the Construction Works are being undertaken in accordance with the Construction Requirements, the Concessionaire shall with due diligence carry out all necessary and periodical Tests in accordance with the Construction Requirements. The Concessionaire shall maintain proper record of such Tests and the remedial measures taken to rectify the defects or deficiencies, if any, indicated by the Test results.

5.9 Operation and Maintenance

(a) The Concessionaire shall maintain the Project Facilities in accordance with the O&M Requirements in Schedule- 5.

(b) The Concessionaire shall, by itself or through a Contractor possessing requisite technical, financial and managerial expertise/capability, operate and maintain on their own the Project Facilities, and Concessionaire shall remain solely responsible to meet the O&M Requirements of their respective facilities.

(c) The BDA and Concessionaire shall, during the Concession Period:

(i) have the requisite organizational set up and designate and appoint suitable officers/ representatives as it may deem appropriate to liaise with each other and to be responsible for all necessary exchange of information required pursuant to this Agreement;

(ii) Concessionaire by itself or through a Contractor be entitled to charge such sums towards maintenance charges from all the occupants of the Project facility, at such rate/s as may be decided by the Concessionaire, at their sole and absolute discretion;

(d) For the purposes of determining that the Project Facilities is being maintained in accordance with O&M Requirements, the Concessionaire shall with due diligence carry out all necessary and periodical Tests in accordance with the

applicable laws. The Concessionaire shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.

5.10 Alterations, Modifications

(a) The Concessionaire shall be at liberty to carry out necessary alterations and/or modifications to the Project Facilities, subject to its adherence to Applicable Law and obtaining prior approvals and Applicable Permits for such alteration or modification. Provided however that such alteration and/or modification shall not at any time cause any damage to the structure of the Project Facilities or otherwise adversely affect the safety of the occupants of the Project Facilities.

5.11 Insurance

(a) During Construction

The Concessionaire shall, at its cost and expense, secure and maintain during the period of construction, such insurance as are necessary, including but not limited to the following:

(i) builders' all risk insurance;

(ii) comprehensive third party liability insurance including injury or death to personnel / representatives of Persons who may enter the Project Site;

(iii) workmen's compensation insurance;

(iv) any other insurance that may be necessary to protect the Concessionaire, its employees and its assets against loss, damage, destruction, business interruption or loss of profit including insurance against all Force Majeure Events that are insurable.

(b) During O&M

The Concessionaire shall at its cost and expense, secure and maintain during the Concession Period, insurance that may be necessary to protect the Concessionaire, its employees and its assets against loss, damage, destruction, business interruption or loss of profit including insurance against all Force Majeure Events that are insurable in relation to the Commercial Facility.

(c) Evidence of Insurance

The Concessionaire shall, provide to BDA as and when BDA may call for the copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by the Concessionaire in accordance with this Agreement.

(d) Validity of Insurance

The Concessionaire shall from time to time promptly pay insurance premium, keep the insurance policies specified above in force throughout the Concession Period, and furnish copies thereof to BDA. The insurance policy shall not be cancelled or terminated unless 60 days' clear notice of cancellation is provided to BDA in writing.

5.12 Environmental Compliance

The Concessionaire shall, ensure that all aspects of the Project Facilities during the Concession Period, as the case may be, and processes employed in the construction, operation and maintenance thereof shall conform to the laws pertaining to environment, health and safety aspects including, policies and guidelines related thereto, including rainwater harvesting mechanism and such other technical service installations.

5.13 General Obligations

The Concessionaire shall at its own cost and expense:

(a) investigate, study, design, renovate, operate and maintain the Project Facilities in accordance with the provisions hereof;

(b) obtain all Applicable Permits as required by or under the Applicable Laws and be in compliance thereof at all times during the Concession Period;

(c) comply with Applicable Law governing the operations of Project Facilities at all times during the Concession Period;

(d) appoint, supervise, monitor and control as necessary, the activities of Contractors under the respective Project Agreements;

(e) make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and solely liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and hereby indemnifies BDA against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall BDA be treated as employer in this regard;

(f) make its own arrangements for securing construction materials and observe and fulfil the environmental and other requirements under the Applicable Law and Applicable Permits;

(g) be responsible for all the health, environment and safety aspects of the Project at all times during the Concession Period.

(h) upon receipt of a request thereof, afford access to the Project Facilities to the authorized representatives of BDA for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement.

5.14 No Breach of Obligations

The Concessionaire shall not be considered to be in breach of its obligations under this Agreement nor shall it incur or suffer any liability if and to the extent performance of any of its obligations under this Agreement is affected by or on account of any of the following:

i. a Force Majeure Event, subject to Article 7.3;

ii. Closure of the Project Facilities or part thereof with the approval of BDA.

5.15 Consortium Condition

The Concessionaire shall ensure that the Lead Member holds not less than 26% (Twenty six Percent) of the paid – up equity share capital of the Concessionaire SPV and all the members of the Consortium shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity of the SPV at all times until the commencement of the commercial operation date of the Project Facility. Associate Member/s however are permitted to make any changes in share holding structure with respect to their shares.

ARTICLE 6

6 BDA's OBLIGATIONS

In addition to and not in derogation or substitution of any of its other obligations under this Agreement, BDA shall have the following obligations:

6.1 Specific Obligations:

6.1.1 BDA shall deliver physical possession of the Project Facility to the Concessionaire in accordance with Clause 3.1.1 above.

6.1.2 In the event the Concessionaire terminating this Agreement in terms of this agreement, BDA shall, within a period of Twenty One (21) days from the date of termination, pay the following sums to the Concessionaire:

(a) equal to 170% of the aggregate of all costs and expenses incurred by the Concessionaire under this Agreement from the date of this Agreement until the date of termination i.e. Book Value of the capital investments net of depreciation computed on straight line basis as on Termination Date, made by the Concessionaire towards the Project Facilities, as determined by an independent firm of chartered accountants mutually agreed upon and appointed by the Parties for the purpose;

(b) aggregate of the sums paid by the Concessionaire under this Agreement towards Security Deposit and other payments if any;

(c) The Performance Guarantee of 5% of Awarded Price provided by the Concessionaire by way of a Bank Guarantee shall stand cancelled.

(d) Delay in releasing payment within 21 days from the date of termination would carry simple interest at 12% per annum.

6.1.3 BDA shall assist in a timely manner for obtaining such approvals, permissions and authorizations which the Concessionaire may require or is obliged to seek from BDA under this Agreement, in connection with implementation of the Project and the performance of its obligations. Provided, where authorisation for availment of utilities such as power, water, sewerage, telecommunications or any other incidental services/utilities is required, the same shall be provided by BDA in the form as set out in Schedule 4, within three weeks (21 days) from receipt of request from the Concessionaire to make available such authorisation.

6.1.4 BDA will not mortgage whole or any part of the Project site and project facilities thereto for the purpose of securing any facilities or loans or limits from banks or financial institutions until the expiry date of Concession Period.

6.1.5 BDA shall provide the Concessionaire with copies of all documents of title, municipal and other documents including but not limited to constitution documents of BDA, bye-laws, rules and regulations, approvals, permits, sanctions and other documents pertaining to its title and ownership over the Project Land so as to enable the Concessionaire to provide the same to Persons intending to occupy portions of the Project Facility.

6.1.6 To enable the Concessionaire to carry out the scope of its activities as contemplated herein, BDA shall empower the Concessionaire or its nominee/s to approach the Town Planning Authority within BDA or Bangalore Mahanagara Palike or such other competent authorities, and get the required permissions and sanctions as desired by the Concessionaire.

6.1.7 BDA shall be responsible to pay property tax together with all related cesses and other municipal and other statutory levies relating to the Project Site and the Project facility during the Concession, if applicable.

ARTICLE 7

7 FORCE MAJEURE

7.1 Force Majeure Event

Any of the following events which is beyond the control of the Party claiming to be affected thereby ("Affected Party") and which the Affected Party has been unable to overcome or prevent despite exercise of due care and diligence, and prevents the Affected Party from performing or discharging its obligations under this Agreement, shall constitute Force Majeure Event:

(a) acts of god, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, inundation, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);

(b) storm, tempest, hurricane, cyclone, thunder or other extreme atmospheric disturbances and/or any other natural calamity;

(c) fire caused by reasons not attributable to the Concessionaire or persons to whom Project Facility have been leased / licensed by the Concessionaire or any of their employees, contractors or agents appointed by the

Concessionaire for purposes of the management of Commercial facility or other persons using the facilities;

(d) acts of terrorism or arson or civil strife or mob fury;

(e) riots, industrial disturbances not arising on account of the acts or omissions of the Concessionaire, war, hostilities (whether declared or not), invasion, rebellion, weapon conflict or military actions, civil war, (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, civil commotion or politically motivated sabotage, ionizing radiation, contamination by radioactivity from nuclear fuel, any nuclear waste, radioactive toxic explosion, volcanic eruptions, any failure or delay of a Contractor caused by the events mentioned in this sub-clause;

(f) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year,

(g) Any lawful action of a Government Agency or Public Authority having Material Adverse Effect including but not limited to

a. Acts of expropriation, compulsory acquisition or takeover by any Government Agency or Public Authority of the Project Facilities/ site or any part thereof; and

b. Any unlawful, unauthorised or without jurisdiction refusal to issue or to renew or the revocation of any Applicable licenses/ approvals, reasons other than Concessionaire's breach or failure in complying with the Project Requirements, Applicable Laws, Applicable licenses and approvals, any judgement or order of court, a Governmental Agency, or any other authority or of any contract by which the Concessionaire or the Contractor as the case may be is bound.

c. any judgment or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;

d. The discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or

e. any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project Facility to be financially unviable or otherwise not feasible;

f. industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;

g. failure of the Authority to permit the Concessionaire to continue its Construction Works, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds or for any other reason;

(h) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 34 and its effect, in financial terms, exceeds the sum specified in Clause 34.1;

(i) Compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;

(j) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit,

authorization, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit;

(k) Any event or circumstances of a nature analogous to any of the foregoing.

7.2 Obligations of Parties

(a) As soon as practicable and in any case within 7 (Seven) days from the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Affected Party shall notify the other Party and Project Management Consultant, as the case may be, of the same setting out, inter alia, the following in reasonable detail:

(i) the nature and extent of the Force Majeure Event;
(ii) the estimated Force Majeure Period, if possible;
(iii) the nature of and the extent to which, performance of any of its obligations under this Agreement is affected by the Force Majeure Event;
(iv) any other relevant information concerning the Force Majeure Event.

(b) As soon as practicable and in any case within 5 days of notification by the Affected Party in accordance with the preceding sub-article 7.2 (a), the Parties along with the Project Management Consultant and Project Manager, as the case may be shall meet and hold discussions in good faith and where necessary conduct physical inspection/survey of the Project Facility and other Facilities in order to:

(v) assess the impact of the underlying Force Majeure Event,

(vi) to determine the likely duration of Force Majeure Period and,

(vii) to formulate damage mitigation measures and steps to be undertaken by the Parties for resumption of obligations, the performance of which shall have been affected by the underlying Force Majeure Event.

(viii) Assess at reasonable intervals the impact of the Force Majeure Event

7.3 Performance of Obligations

7.3.1 Notwithstanding the joint action of the parties as envisaged above, if the Affected Party is wholly or partially disabled from performing any of its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such obligations to the extent it is unable to perform the same on account of such Force Majeure Event and Concessionaire is deemed to have been granted an extension of Concession Term to the extent of the Force Majeure Period.

Duty to report Force Majeure Event:

7.3.2 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

i. the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article with evidence in support thereof;
ii. the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
iii. the Force Majeure Period;
iv. Any other information relevant to the Affected Party's claim;

(a) the excuse from performance shall be of no longer duration than is necessitated by the Force Majeure Event;

(b) the Affected Party has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the Project Facilities as a result of the Force Majeure Event and to restore the Project Facilities, in accordance with Good Industry Practice;

(c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event;

(d) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder, the non issue of such notice being no excuse for any delay for resuming such performance;

(e) the Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Agreement; provided, however, that in the event, the Concessionaire or persons who have derived a right to use the Project Facilities through them are unable to use and enjoy the same, no concession payment shall be due or payable for the period of continuance of the Force Majeure Event.

(f) any insurance proceeds received shall be entirely applied to repair, replace or restore the assets damaged on account of the Force Majeure Event, in accordance with Good Industry Practice.

7.3.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than fortnightly) reports containing information, and such other information as the other Party may reasonably request the Affected Party to provide.

7.4 Effect of Force Majeure Event on the Concession

7.4.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth for fulfilment of Conditions Precedent and for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

7.4.2 At any time after the Appointed Date, if any Force Majeure Event occurs:

(a) before COD, the Construction Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or

(b) After COD, during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period equal in length to the period during which the Concessionaire was prevented from collection of fee on account thereof.

7.5 Allocation of costs arising out of Force Majeure

7.5.1 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project (the "Force Majeure Costs") shall be allocated and paid as follows:

(a) all Force Majeure Costs not exceeding the Insurance Cover, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, shall be reimbursed by the Authority to the Concessionaire.

For the avoidance of doubt, Force Majeure Costs may include interest payments on Debt Due, O&M Expenses, any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include any costs which are expressly covered under any provision of this Agreement or debt repayment obligations.

7.5.2 Save and except as expressly provided in this Article, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

7.6 Termination due to Force Majeure Event

a. Termination

(i) If a Force Majeure Event, is an event described under Sub-articles 7.1(a) to 7.1(k), continues or is in the reasonable judgement of the Parties likely to continue beyond a period of 2 (two) years, the Parties may mutually decide to terminate this Agreement or continue this Agreement on the same terms envisaged under this Concessionaire Agreement or mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 2 (two) years, be entitled to terminate this Agreement.

(ii) If the Force Majeure Event is an event described in 7.1 and the Concessionaire having exhausted the remedies available to him under the Applicable Laws, has been unable to secure the remedy, the Concessionaire shall be entitled to terminate this Agreement.

Provided that the Parties may, by mutual agreement, decide to continue this Agreement on revised terms or to terminate this Agreement, if the Force Majeure Event is likely to subsist for a period exceeding 2 (two) years.

b. Termination Notice

If either Party, having become entitled to do so, decides to terminate this Agreement pursuant to the preceding sub-article 7.6(a) (i) or (a) (ii), it shall issue Termination Notice setting out ;

(i) in sufficient detail the Force Majeure Event;

(ii) the Termination Date which shall be a date occurring not earlier than 30 days from the date of Termination Notice;

(iii) the estimated lossess / damages suffered and Termination Payment including the details of computation thereof and;

(iv) any other relevant information.

c. Obligation of Parties

Following issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that;

(i) the Termination Payment, if any, payable by BDA in accordance with the following sub-article (d) is paid to the Concessionaire on the Termination Date and

(ii) the Project Facilities are handed back to BDA by the Concessionaire on the Termination Date free from all Encumbrances.

d. Termination Payment

Upon Termination of this Agreement due to a Force Majeure Event described under Sub-articles 7.1(a) to 7.1(k), the Concessionaire shall receive equal to 170% of the Book Value of the capital investments net of depreciation computed on straight line basis as on Termination Date, made by the Concessionaire towards the Project Facilities, as determined by an independent firm of chartered accountants mutually agreed upon and appointed by the Parties for the purpose less the proceeds of any amounts under insurance policies. BDA shall also release the Performance Security.

7.7 Liability for other losses, damages etc.

Save and except as expressly provided in this Article, neither Party hereto shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event.

ARTICLE 8

8 EVENTS OF DEFAULT AND TERMINATION

8.1 Events of Default

Event of Default means either Concessionaire Event of Default or BDA Event of Default or both as the context may admit or require.

(a) Concessionaire Event of Default

Any of the following events shall constitute an event of default by the Concessionaire ("Concessionaire Event of Default") unless such event has occurred as a result of a Force Majeure or BDA Event of Default.

(i) The Concessionaire has failed to make the Concession Payment on Due Dates for three consecutive years.

(ii) A resolution for voluntary winding up has been passed by the shareholders of the Concessionaire;

(iii) Any petition for winding up of the Concessionaire has been admitted and liquidator has been appointed or the Concessionaire has been ordered to be wound up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction with the prior consent of BDA, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Concessionaire under this Agreement.

(iv) The Concessionaire has abandoned the Project Facilities;

(v) The Concessionaire has unlawfully repudiated this Agreement.

(b) BDA Event of Default

Any of the following events shall constitute an event of default by BDA ("BDA Event of Default"), when not caused by a Concessionaire Event of Default:

(i) BDA fails to handover the Project Site in terms hereof.

(ii) BDA withholds, without reasonable cause, the Project Completion Certificate beyond a period of 30 days from the completion of construction works relating to construction of Project Facility / Commercial Facility.

(iii) BDA has unlawfully repudiated this Agreement.

(iv) Any proceeding to wind up / close / conclude operations / activities of Lessor has been initiated either voluntarily or by any competent authority.

(v) BDA has withheld or delayed grant of any approval or permission which the Concessionaire is obliged to seek from BDA under this Agreement, and thereby caused or likely to cause Material Adverse Effect

(vi) Any representation made or warranty given by BDA under this Agreement is found to be false;

8.2 Termination due to Event of Default

(a) Termination for Concessionaire Event of Default

(i) Without prejudice to any other right or remedy which BDA may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, BDA may terminate this Agreement in the manner as set out under Clause 8.1(a).

(ii) If BDA decides to terminate this Agreement pursuant to the preceding clause (i), it shall in the first instance issue Preliminary Notice to the Concessionaire. Within sixty (60) days of receipt of the Preliminary Notice, the Concessionaire shall submit to BDA in sufficient detail, the manner in which it proposes to cure the underlying Event of Default (the "Concessionaire's Proposal to Rectify"). In case of non submission of the Concessionaire's Proposal to Rectify within the said period of 60 days, BDA shall be entitled to terminate this Agreement by issuing Termination Notice, and to appropriate the Performance Security, if subsisting.

(iii) If the Concessionaire's Proposal to Rectify is submitted within the period stipulated therefore, the Concessionaire shall have further period of 60 days or such further period as may be mutually agreed upon to remedy / cure the underlying Event of Default. If, however the Concessionaire fails to remedy/cure the underlying Event of Default within such further period allowed, BDA shall be entitled to terminate this Agreement, by issue of Termination Notice and to appropriate the Performance Security if subsisting.

(b) Termination for BDA Event of Default

(i) Without prejudice to any other right or remedy which the Concessionaire may have in respect thereof under this Agreement,

upon the occurrence of BDA Event of Default, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.

(ii) If the Concessionaire decides to terminate this Agreement pursuant to preceding clause (i) it shall in the first instance issue Preliminary Notice to BDA. Within 60 days of receipt of Preliminary Notice, BDA shall forward to the Concessionaire its proposal to remedy/ cure the underlying Event of Default (the "BDA Proposal to Rectify"). In case of non submission of BDA Proposal to rectify within the period stipulated therefore, Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.

(iii) If BDA Proposal to Rectify is forwarded to the Concessionaire within the period stipulated therefore, BDA shall have further period of 60 days or such further period as may be mutually agreed upon to remedy/ cure the underlying Event of Default. If, however BDA fails to remedy/ cure the underlying Event of Default within such further period allowed, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.

(c) Termination Notice

If a Party having become entitled to do so decides to terminate this Agreement pursuant to the preceding sub article (a) or (b), it shall issue Termination Notice setting out:

(i) in sufficient detail the underlying Event of Default;

(ii) the Termination Date which shall be a date occurring not earlier than 60 days from the date of Termination Notice;

(iii) the estimated termination payment including the details of computation thereof; and,

(iv) any other relevant information.

(d) Obligation of Parties

Following issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that;

(i) until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Facilities,

(ii) the termination payment, if any, payable by BDA in accordance with the following sub-article(f) is paid to the Concessionaire within a period of 21 days from the Termination Date and

(iii) the Project Facility is handed over to BDA by the Concessionaire within a period of 120 days from the Termination Date

(e) Substitution of Concessionaire

At any time during the period of Termination Notice, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice there under from the Lenders' Representative, the Authority shall withhold Termination for a period not exceeding 9 (nine) months from the date of Notice, and any extension thereof, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

(f) Withdrawal of Termination Notice

Notwithstanding anything inconsistent contained in this Agreement, if the Party who has been served with the Termination Notice cures the underlying Event of Default to the satisfaction of the other Party at any time before the Termination Date, the Termination Notice shall stand cancelled provided that the Party in breach shall compensate the other Party for any direct loss/ damage occasioned by the Event of Default which caused the issue of Termination Notice.

(f) Termination Payments

i. Upon Termination of this Agreement on account of Concessionaire's Event of Default, BDA shall be entitled to appropriate the Performance Security.

ii. Upon Termination of this Agreement on account of BDA Event of Default, the Concessionaire shall be entitled to receive from BDA, the

termination payment equal to 170% of the Book Value of the capital investments net of depreciation computed on straight line basis as on Termination Date, made by the Concessionaire towards the Project Facilities, as determined by an independent firm of chartered accountants mutually agreed upon and appointed by the Parties for the purpose. BDA shall also release the Performance Security.

iii. Termination Payment shall become due and payable to the Concessionaire on the date on which the Concession Agreement is terminated and in the event of any delay, the Authority shall pay monthly interest at 12% (twelve per cent) on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 21 (twenty one) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

iv. The Concessionaire expressly agrees that Termination Payment under this Article 31 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

8.3 Accrued Rights of Parties

Notwithstanding anything to the contrary contained in this Agreement, Termination pursuant to any of the provisions of this Agreement shall be

without prejudice to accrued rights of either Party including its right to claim and recover damages and other rights and remedies which it may have in law or contract. The rights and obligations of either Party under this Agreement, including without limitation those relating to the termination payment, shall survive the Termination but only to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 9

9 HANDBACK OF PROJECT FACILITIES

9.1 Ownership

Without prejudice and subject to the concession, the ownership of the Project Facility, including all improvements made therein by the Concessionaire, shall vest with the Concessionaire during the Concession period and immediately on the expiry of the concession period or on sooner termination of the agreement in the manner provided elsewhere in this agreement, the ownership of the Project Facility and all improvements thereon shall, subject to termination payments and any other payment to the Concessionaire as stipulated herein be transferred to BDA by the Concessionaire.

9.2 Concessionaire's Obligations

(a) Upon the expiry of the Concession Period by efflux of time, the Concessionaire shall, hand over vacant and peaceful possession of the

Project Facility to BDA free of cost BDA will not entertain any liability in this account.

9.3 BDA's Obligations

BDA shall, subject to BDA's right to deduct amounts towards;

(i) any outstanding dues, which may have accrued in respect of the Project during the Concession Period duly discharge and release to the Concessionaire the Performance Security within 3 months from the Expiry Date.

ARTICLE 10

10 DISPUTE RESOLUTION

10.1 Amicable Resolution

(a) Any dispute, difference or controversy of whatever nature between the Parties, howsoever arising, out of or in relation to any aspect of this Agreement (the "Dispute") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in sub-article (b) below.

(b) Two senior representatives of the parties shall meet at the earliest mutual convenience and in any event within 15 days to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 15 (fifteen) days of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with the provisions of Article 10.2 below.

10.2 Arbitration

(a) Procedure

Subject to the provisions of Article 10.1, any Dispute which is not resolved amicably shall be finally resolved by arbitration under the Arbitration Act. The arbitration shall be by a panel of three arbitrators, one to be appointed by each Party and the third to be nominated by the two arbitrators appointed by the Parties.

(b) **Place of Arbitration**

The place of arbitration shall be Bangalore city.

(c) **English Language**

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and awards shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

(d) **Performance during Arbitration**

Pending the submission of and/or decision on a Dispute and until the arbitral award is published, the Parties shall continue to perform their respective obligations under this Agreement without prejudice to a final adjustment in accordance with such award.

ARTICLE 11

11 REPRESENTATIONS AND WARRANTIES

11.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to BDA that:

(a) it is duly organised, validly existing and in good standing under the laws of India;

(b) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;

(c) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorise the execution, delivery and performance of this Agreement;

(d) it has the capacity to undertake the Project;

(e) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

(f) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;

(g) there are no actions, suits, proceedings or investigations pending or to the Concessionaire's knowledge threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may constitute Concessionaire Event of Default or which individually or in the aggregate may result in Material Adverse Effect;

(h) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Agency which may result in Material Adverse Effect;

(i) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;

(j) subject to receipt by the Concessionaire from BDA of any amount due under any of the provisions of this Agreement, in the manner and to the extent provided for under the applicable provisions of this Agreement all rights and interests of the Concessionaire in and to the Project Facility shall pass to and vest in BDA on the Termination Date free and clear of all Encumbrances, without any further act or deed on the part of the Concessionaire or BDA;

(k) no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to BDA or to any Government Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;

(l) Without prejudice to any express provision contained in this Agreement, the Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has after a complete and careful examination made an independent evaluation of the Project, and the information provided by BDA, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder.

11.2 Representations and Warranties of BDA

BDA represents and warrants to the Concessionaire that:

(a) BDA has full power and authority to grant the Concession and has executed this Agreement in accordance with the provisions of its constitute documents and Rules, Regulations and Byelaws framed there under;

(b) BDA has taken all necessary action to authorise the execution, delivery and performance of this Agreement;

(c) This Agreement constitutes BDA's legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

(d) There are no suits or other legal proceedings pending or threatened against BDA in respect of the Project site or the Project.

(e) The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of BDA's constitution documents, rules, regulations and byelaws framed there under or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;

(f) It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Agency which may result in Material Adverse Effect;

(g) It has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;

(h) it is duly organised, validly existing and in good standing under Applicable laws;

(i) BDA has not entered into any similar Agreement or Arrangement with any third Party;

(j) no representation or warranty by BDA contained herein or in any other document furnished by it to the Concessionaire or to any Government

Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;

11.3 Obligation to Notify Change

In the event that any of the representations or warranties made/given by a Party ceases to be true or stands changed, the Party who had made such representation or given such warranty shall promptly notify the other of the same.

ARTICLE 12

12 MISCELLANEOUS

12.1 Assignment and Charges

(a) The Concessionaire shall be entitled to assign or sub-contract all or any of its rights and obligations in favour of any Person without the prior consent of BDA.

(b) The Concessionaire shall be entitled to:

(i) The mortgage of Leasehold rights and/or Concessionaire rights of the Concessionaire, revenue and receivables as security for indebtedness, in favour of the Lenders and working capital providers for the Project;

(ii) assignment of Concessionaire's rights and benefits under this Agreement to or in favour of the Lenders as security for financial assistance provided by them.

(iii) Leases/ Licenses of Project Facility during the Concession Period

(iv) To assign, lease, sub-lease, mortgage or alienate the lease hold rights and interests either in full or in part in respect of the project site and project facility to any person/ company / firm / body of individuals / trusts / financial institutions etc. as it may desire from time to time on such conditions as it may deem fit.

12.2 Interest

Any sum which becomes payable other than concession payment under any of the clauses of this Agreement by one Party to the other Party shall, if the same be not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party liable to pay to the Party entitled to receive the same. Such sum shall until payment thereof carry interest at SBI PLR plus 2% per annum from the due date for payment thereof until the same is paid to or otherwise realised by the Party entitled to the same.

Provided the stipulation regarding interest for delayed payments contained in this Article 13.2 shall neither be deemed nor construed to authorise any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

12.3 Governing Law and Jurisdiction

This Agreement shall be governed by the laws of India. The Courts at Bangalore city shall have exclusive jurisdiction over all matters arising out of or relating to this Agreement to the exclusion of all other courts in India.

12.4 Waiver

(a) Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

(i) Shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this agreement;
(ii) Shall not be effective unless it is in writing and executed by a duly authorised representative of such party; and
(iii) shall not affect the validity or enforceability of this Agreement in any manner.

(b) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation hereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver/breach of any terms, conditions or provisions of this Agreement.

12.5 Survival

Termination of this Agreement

(a) shall not relieve the Concessionaire or BDA of any obligations already incurred hereunder which expressly or by implication survives Termination hereof, and
(b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the Termination Date

12.6 Amendments

This Agreement and the Schedules together constitute a complete and exclusive understanding of the terms of the Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by all the Parties hereto and evidenced in writing.

12.7 Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery, recognised courier, or registered post with acknowledgement and delivered or transmitted to the Parties at their respective addresses set forth below:

If to BDA:
The Executive Engineer,
Markets Division,
Bangalore Development Authority,
T. Chowdaiah Road,
Kumara Park West,
Bangalore - 560020

If to the Concessionaire:
.....
.....
……
……
.....

Or such other address, as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered,

when delivered by hand, by recognised courier or by registered post at that address.

12.8 Severability

If for any reason whatsoever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties shall negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided failure to agree upon any such provisions shall not be subject to dispute resolution under this Agreement or otherwise.

12.9 No Partnership

Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the Parties.

12.10 Language

All notices required to be given under this Agreement and all communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

12.11 Exclusion of Implied Warranties etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties and any representation by any Party not contained in a binding legal agreement executed by the Parties.

12.12 Counterparts

This Agreement may be executed in two counterparts, each of which when executed and delivered shall constitute an original of this Agreement but shall together constitute one and only the Agreement.

IN WITNESS WHEREOF THE, PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED SEALED AND DELIVERED

For and on behalf of Lessor (BDA) by

Secretary

In the presence of :

1)

2)

For and on behalf of Concessionaire by

1) For .....

Designation

2) .....

3) For .....

Designation

In the presence of :

1)

2)

ARTICLE 13

SCHEDULE 1

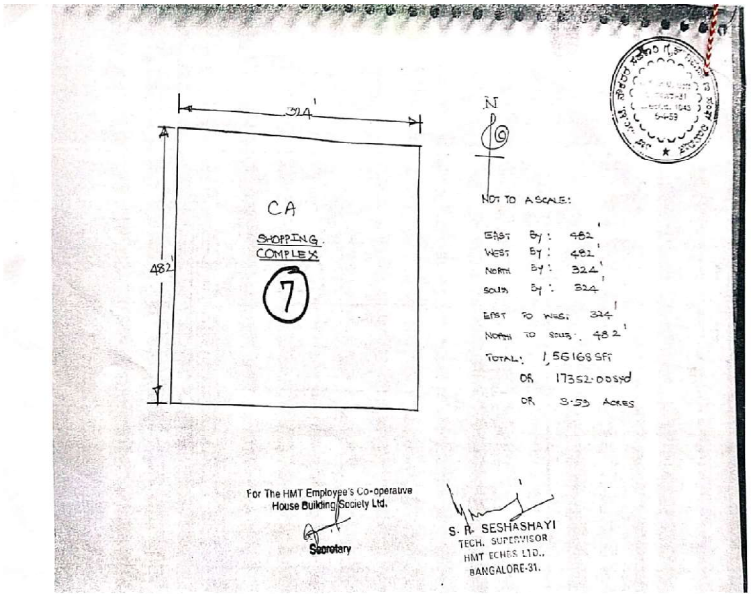
PROJECT SITE

C.A. Site No. 07, situated in Sy. Nos. 54, 57, 59 and 60 in HMT Layout, Nagasandra Village, within Jalahalli Planning Zone, Bengaluru ("Project Site").

Project Site: Approximate dimension:

East to West (98.00+97.00)/2 mtr and North to South (145.0+146.0)/2 mtr;

A map providing details of the site has been provided as follows:
Indicative area details: 14186.25 Square Meters;



Bounded by
East by: Road
West by: Road
North by: 60' Road
South by: Road

Article 14

SCHEDULE 2

PAYMENT SCHEDULE

1. **Due date shall be 10th day of the 1st Month of the subsequent calendar year.**

Sl.No.	Concession Payment (Amounts in Rupees) from the Commercial Operation Date(inclusive of all taxes)	
	In Figures	In Words

Article 15

SCHEDULE 3

FORMAT FOR LETTER OF AUTHORISATION

(To be given on BDA letterhead)

To whomsoever it may Concern

This is to confirm that the Possession of the Property bearing C.A. Site No. 07, situated in Sy. Nos. 54, 57, 59 and 60 in HMT Layout, Nagasandra Village, within Jalahalli Planning Zone, Bengaluru measuring 14186.25 Square Meters., has been handed over to M/S ..... (Lead Member) and ..... (Associate member) for Design, Build, Operate, Lease and transfer pursuant to the Concession Agreement dated ....., entered into between the BDA and M/S ....., and the Consortium comprising of M/s. .... (Lead Member) and ..... (Associate member).

In terms of the said Agreement, the Concessionaire is authorised to occupy the said Project Site and carry out all activities authorised by the said Agreement, and for that purpose, to apply for and obtain all approvals, licenses and permits, required in connection with any construction on the Site, carry out new construction, and carry out operation and management of the said Site and to avail the utilities such as power, water, telecommunication and any other incidental utilities or services required in connection therewith.

Yours faithfully,	We confirm that we have taken possession
For, Bangalore Development Authority.	For, The Concessionaire
Executive Engineer	Authorized Representative

Article 16

SCHEDULE 4

CONSTRUCTION REQUIREMENTS

1. General

The Concessionaire shall observe that the Project Facilities meet the requirements set out in this Schedule.

2. Layout

a. Access to site

Access to the site shall be provided such that vehicular entry/ exit from the site does not affect the flow of traffic/ cause congestion on the roads.

b. Set backs, coverage and safety aspects

The set backs required on all the sides of building/s and maximum plot coverage permissible shall be as per the prevailing Building Byelaws of Bruhat Bangalore Mahanagara Palike. All the safety aspects set forth by the Authorities sanctioning the building plan should be practiced.

c. Parking Facility

The Concessionaire shall construct the Parking Facility with four – wheeler and two – wheeler Parking Spaces adequate for the requirements of the Project Facility in accordance with the provisions of prevailing the Bruhat Bangalore Mahanagara Palike Building Byelaws and other Applicable Laws.

3. Construction Requirements

3.1 Codes and Standards

The codes and standards applicable for the design of the Project Facilities are:

(i) Central Public Works Department Specifications (CPWD): Vol. I to VI;
(ii) Bureau of Indian Standards (BIS); and
(iii) National Building Codes (NBC)
(iv) CPWD Specifications for fire fighting and fire alarm systems
(v) Any other standard proposed by the Concessionaire and approved by Project Management Consultant.

The above codes shall include policy circulars, guidelines and special publications, issued in respect thereof from time to time and shall incorporate all amendments and/or modifications to such codes and standards which are available to public.

3.2 Toilets & Drinking Water

The Concessionaire shall provide separate toilets for men and women at suitable locations within the Project Facility as per Applicable Laws. Drinking water facilities shall also be set up in the Project Facility as per requirements.

3.3 Fire Fighting System

The Concessionaire shall design and implement a comprehensive fire fighting system in accordance with CPWD and NBC.

4. Before Commencement of construction

a. Prior to commencement of any construction activity, the Concessionaire shall finalise an implementation plan. The Implementation Plan shall, inter alia, include:

i. A detailed schedule of implementation for putting up and operationalising the Project Facilities covering all stages/ aspects of the Project implementation including design and engineering, procurement of materials and equipment, installation, construction and testing;

ii. Manpower deployment plan, including the designation of key personnel for the management and supervision of all Project activities.

iii. A broad method statement for key items (Earth Works, Concrete Works, Structural Steel Works and Roads) setting out the methodology of construction, materials and construction equipment mobilisation/ utilisation plans, safety

b. Prior to commencement of construction of any of the Project Facilities, the Concessionaire shall have:

(i) Obtained all such Applicable Permits as are necessary to commence construction of such Project Facilities;

(ii) Finalised such Drawings as are necessary and the Implementation Schedule;

(iii) Mobilised the requisite resources, personnel and organisation necessary for the same and designated and appointed suitable officers/ representatives as it may deem appropriate with responsibility to supervise implementation of the Project;

5. During Construction

5.1 The Concessionaire shall:

(i) Ensure that the construction of the Project Facilities is undertaken with minimal inconvenience to the traffic using the existing access road and provide detours wherever required;

(ii) Ensure that no building material, salvage etc is placed on footpaths and right of way so as to interrupt the movement of traffic or pedestrian circulation.

(iii) Take necessary precautions to avoid accidents and respond to Emergency as quickly as possible;

(iv) Take precautions to avoid inconvenience to, damage to, destruction of or disturbance to any third party rights and properties;

(v) be in compliance with the Applicable Laws and Applicable Permits obtained for the Project;

(vi) Adhere to the Implementation Plan; and

(vii) Deploy adequate number of qualified and competent personnel having relevant experience and skills for implementation of the Project.

5.2 Positions and Levels

a. The Concessionaire shall be responsible for:

(i) the accurate setting-out in relation to original survey control points, lines and levels of reference provided by the BDA;

(ii) the correctness of the positions, levels, dimensions and alignment of all parts of the works;

(iii) the provision of all necessary instruments, appliances and labor in connection with the foregoing responsibilities;

b. c. The checking of any setting-out or of any line or level by Project Engineer shall not in any way relieve the Concessionaire of his responsibility for the accuracy thereof and the Concessionaire shall carefully protect and preserve all benchmarks, sight rails, pegs and other materials used in setting-out the works.

5.3 Tests

Various quality control tests would be undertaken for the Project as per the standards prescribed by National building Code and Bureau of Indian Standards.

5.4 The Concessionaire shall mobilise adequate numbers of equipment, plants and machinery to ensure adherence to the Implementation Plan.

6. After Completion of Construction

Upon completion of construction, the Project Site / Project Facilities shall be cleared of all construction equipment, surplus materials, debris and temporary installations and shall be left in tidy and an aesthetically pleasing appearance.

Article 17

SCHEDULE 5

O&M REQUIREMENTS

1. General

a. The Concessionaire shall comply with the O&M Requirements for their respective portions of Project Facility as set out in this Schedule.

b. In the planning and implementation of all works and functions associated with the operation and maintenance of the Project Facilities, the Concessionaire shall take all such actions and do all such things (including without limitation, organising itself, adopting measures and standards, executing procedures including inspection procedures, and engaging contractors) in such manner, as will:

(i) Ensure the safety of personnel deployed on and users of the respective Facilities or part thereof;
(ii) Keep the Project Facilities from undue deterioration and wear;

c. During the Concession Period, the Concessionaire shall ensure that :

(i) Project Facility is kept free from undue deterioration and undue wear;
(ii) applicable and adequate safety measures are taken;
(iii) adverse effects on the environment and to the owners and occupiers of property and/or land in the vicinity of the Project Facilities, due to any of its actions, is minimised;
(iv) any situation which has arisen or likely to arise on account of any accident or other emergency is responded to as quickly as possible and its adverse effects controlled/minimised;

(v) disturbance or damage or destruction to property of third party by operations of the Project Facilities is controlled/minimised;

(vi) a complaint register to record grievances of any member of the public in relation to the operations and maintenance of the respective Facilities is duly maintained;

(vii) all materials used in the maintenance, repair and replacement of any of the respective Facilities shall meet the Construction Requirements.

(viii) the personnel assigned by the Concessionaire have the requisite qualifications and experience and are given the training necessary to enable the Concessionaire meet the O & M Requirements.

2. Maintenance Requirements

A. Routine Maintenance Activities

(a) In order to ensure smooth and uninterrupted use of the Project Facilities routine maintenance of the Project Facilities shall include but not be limited to:

i. repairs to equipment, pavement, building and other civil works which are part of the Project Facilities;

ii. replacement of equipment/consumables,

iii. maintenance of the Parking Facility and Project Facility in accordance with Good Industry Practice;

iv. keeping the Project Facilities in a clean, tidy and orderly condition free of litter and debris;

v. removing and disposing of in accordance with all Applicable Laws and Applicable Permits, all rubbish, debris, etc. including any and all equipment, supplies, materials and wastes brought or produced by the Concessionaire / Contractor;

vi. taking all practical measures to prevent damage to the Project Facilities;

vii. preventing, with the assistance of concerned law enforcement agencies where necessary, any unauthorised entry to and exit from and any encroachments on the Project Facilities;

viii. taking all reasonable measures for the safety of all the workmen, material, supplies and equipment brought to the Project Facilities. Explosives, if any, shall be stored, transported and disposed of by the Concessionaire in accordance with Applicable Laws / Applicable Permits.

(b) The Concessionaire shall regularly carry out the necessary preventive maintenance activities for their Project Facility to ensure adherence to the Construction Requirements throughout the Concession Period.

B. Emergency Maintenance Activities

(a) The Emergency Response Protocol ("ERP") shall be developed by Concessionaire for their Project Facility in consultation with the local police, hospital/ambulance services, fire departments and other authorities/support personnel and the Project Engineer.

(b) The ERP shall set out steps to be taken and measures to be adopted by the Concessionaire in responding to dealing with Emergency including those situations related to vehicle accidents, fire in Project Facilities involving personal injuries or fatalities, property damage and force Majeure.

(c) In case of Emergency, the Concessionaire shall

(i) carry out such emergency maintenance and repairs as may be required to repair the damages, if any, where required under the supervision of the police in order to

ensure that the Project Facilities are returned to normal operating standards as quickly as possible.

(ii) follow the relevant operating procedure including the setting up of temporary traffic cones and lights as well as the removal of obstruction and debris expeditiously.

4. Safety

The Concessionaire shall implement a Safety Management Programme in line with relevant guidelines.

Article 18

SCHEDULE 6

SCOPE OF WORK OF PROJECT ENGINEER OR PROJECT MANAGEMENT CONSULTANT

1. Role of the Project Engineer or Project Management Consultant (PMC)

The PMC is expected to play a positive and independent role in discharging its functions, thereby facilitating the smooth implementation and operation of the Project.

Broadly, the role of the Project Engineer is to:

(a) report to the Parties on the various physical, technical and financial aspects of the Project based on inspections, site visits and Tests,

(b) assist the Parties in arriving at an amicable settlement of disputes, should the need arise, and

(c) review matters related to safety measures adopted by the Concessionaire for the Project.

2. Scope of Services

The services to be provided by the PMC are listed below. In addition, the scope of services would also include such other functions as are required to be undertaken pursuant to specific provisions of the Agreement.

2.1 Implementation Period - Design and Planning

(a) Review of the following submitted by the Concessionaire :

(i) Implementation Plan;

(ii) Condition Survey of the site and other construction in the Project area.

2.2 Implementation Period - Construction

(a) The PMC would monitor, in accordance with Good Industry Practice, the progress in implementation and ensure compliance with the Construction Requirements. For this purpose the Project Engineer shall undertake, inter-alia, the following activities and where appropriate make suitable suggestions:

i. monitor the progress in implementation of the Project;
ii. review the safety measures implemented;

2.3 Operations Period

Review of operations of Project Facilities every 6 months for the first one year of operations.

2.4 Breach of Obligations

If during the course or upon review / inspection undertaken by the PMC or otherwise, it transpires that either of the Parties is in breach/ default of any of its obligations under the Agreement, the Project Engineer shall, under intimation to the other Party, require the defaulting Party to remedy such breach/ default within such time and in such manner as the Project Engineer may deem fit and in each case the same shall be recorded.

2.5 Meetings, Records and Reporting

(a) The PMC would be required to participate in the Project review meetings held from time to time by the Parties.

(b) The PMC shall, in the ordinary course, maintain record of the activities undertaken by it in discharge of its functions and responsibilities. This would include records in respect of the following:

(i) Inspections undertaken and notices/ instructions issued to the Concessionaire;

(ii) Review of compliance with Project Requirements;

(iii) Force Majeure Events;

(iv) Breaches and defaults by the Parties; and

(c) The PMC would be required to submit the following reports to the Parties during his tenure:

- Report as may be reasonably required by BDA or as may be necessary to give effect to the provisions of the Agreement.
- Alarm signals, if any.

Article 19

SCHEDULE 7

PERFORMANCE SECURITY

(PROFORMA OF BANK GUARANTEE)

THIS DEED OF GUARANTEE executed on this the _____day of _____at _____ by _____ (Name of the Bank) having its Head / Registered office at _____ hereinafter referred to as "the Guarantor" which expression shall unless it be repugnant to the subject or context thereof include successors and assigns;

In favour of

The Commissioner, BDA, T. Chowdaiah Road, Kumarakrupa West, Bangalore – 560 020, hereinafter referred to as "BDA", which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

WHEREAS

A. By the Concession Agreement being entered into between BDA and _____, a company incorporated under the provisions of the Companies Act, 1956, having its registered office/ permanent address at _____ ("the Concession Agreement"), the Company/firm has been granted the Concession to implement the project envisaging development, operations, maintenance and transfer of the Commercial Complex hereinafter referred to as Project

B. In terms of the Concession Agreement, the Company is required to furnish to BDA, an unconditional and irrevocable bank guarantee for an amount of Rs. _____/- (Rupees _____ Only) as security for due and punctual

performance/discharge of its obligations under the Concession Agreement, relating to achieving operations of the Project, substantially in the format annexed as Schedule 3 to the Concession Agreement.

C. At the request of the Company, the Guarantor has agreed to provide guarantee, being these presents guaranteeing the due and punctual performance/discharge by the Company of its obligations under the Concession Agreement relating to achieving operations of the Project.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

1. Capitalised terms used herein but not defined shall have the meaning assigned to them respectively in the Concession Agreement.

2. The Guarantor hereby irrevocably guarantees the due and punctual performance by M/s._____ (hereinafter called "the Concessionaire") of all its obligations relating to achieving operations of the Project during the Concession Period.

3. The Guarantor shall, without demur, pay to BDA sums not exceeding in aggregate Rs. _____/- (Rupees _____ Only), within thirty (30) calendar days of receipt of a written demand therefore from BDA stating that the Company has failed to meet its performance obligations under the Concession Agreement. The Guarantor shall not go into the veracity of any breach or failure on the part of the Concessionaire or validity of demand so made by BDA and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Concessionaire or any other Person. The Guarantor's obligations hereunder shall subsist until all such demands are duly met and discharged in accordance with the provisions hereof.

4. In order to give effect to this Guarantee, BDA shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession

Agreement or other documents or by the extension of time for performance granted to the Company or postponement/non exercise/ delayed exercise of any of its rights by BDA or any indulgence shown by BDA to the Concessionaire and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non exercise, delayed exercise of any of its rights by BDA or any indulgence shown by BDA provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.

5. This Guarantee shall be irrevocable and shall remain in full force and effect until _____ unless discharged/released earlier by BDA in accordance with the provisions of the Concession Agreement. The Guarantor's liability in aggregate be limited to a sum of Rs. _____/- (Rupees _____ Only).

6. This Guarantee shall not be affected by any change in the constitution or winding up of the Concessionaire/the Guarantor or any absorption, merger or amalgamation of the Concessionaire/the Guarantor with any other Person.

7. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorised to execute this Guarantee pursuant to the power granted under _____.

IN WITNESS WHEREOF THE GUARANTOR HAS SET ITS HANDS HEREUNTO ON THE DAY, MONTH AND YEAR FIRST HEREINABOVE WRITTEN.

SIGNED AND DELIVERED

by _____Bank

by the hand of Shri _____

its _____and authorised official.

Article 20

SCHEDULE 8

COPY OF JOINT BIDDING AGREEMENT / MEMORANDUM OF UNDERSTANDING

(to be attached by the Concessionaire in case of the Consortium)